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Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

**His Honour
Judge H. Ward Allen**



VOLUME 2



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Chapter XII

The Role of Jennifer Angela Popen

Heretofore I have attempted to set forth a somewhat chronological review of events and decisions affecting Kim's life. I have not paid specific attention to the position of individuals except in relation to some particular aspects of that chronological review.

I want now in this and the immediately following Chapters to examine the roles of various persons.

This Chapter will review the testimony and role of Jennifer Popen. In this section, I shall call her "Mrs. Popen."

I have already indicated that I found Mrs. Popen to be an unreliable witness. While harsh, Mr. Carter's stated view of her as being a "proverbial liar" and "her usual evasive self" is accurate. I think it is immaterial and unnecessary for the purposes of this Report to consider whether being such a person is rooted in or related to any psychiatric or other illness.

Mrs. Popen's testimony upon the Inquiry is not worthy of belief. That general condemnation applies to her testimony certainly when it is contradicted by the testimony of others whom I accept as reliable witnesses. It applies with equal force when some portion of her testimony upon the Inquiry is contradicted by another portion of her testimony upon the Inquiry or by her testimony in other proceedings. It applies with equal force when some portion of her testimony is so convoluted or distorted as to be unintelligible or self-contradictory. It applies with equal force when her testimony upon the Inquiry is just too incredible to be accepted. There were many examples of each of those four situations.

Mrs. Popen demonstrated an excellently selective memory. She testified only as to what she wanted to testify and claimed to have a good memory. In other areas she just did not remember even though some of the events she did not remember seemed to me to be ones she would more likely remember than some events she claimed to remember.

Mrs. Popen demonstrated guile. While saying that she and her husband had often, as any man and wife might do in the circumstances, discussed the question of his plea to the charge under section 40 of The Child Welfare Act disposed of in February and March, 1976, she always added that such discussion took place only with their solicitor. Clearly that rider was added to protect her invocation of solicitor-client privilege, which served to limit the testimony of her husband and herself upon the Inquiry.

I do not accept that they did not discuss that plea amongst other matters in the privacy of their own home. In my view however, the purposes of the Inquiry did not require any enlargement of that area of investigation of her role in the life of Kim.

For my present purposes, I am prepared to accept that Mrs. Popen was born in Jamaica where she met and married Annals Popen at a rather young age in January, 1973 and that she later joined him in Canada where Kim was born in January, 1975.

In view of my assessment of Mrs. Popen's credibility I am not prepared, in the absence of credible confirmatory testimony or evidence, to accept her testimony as to events in her life in Jamaica apart from her marriage to Annals Popen. I do not reject out of hand her testimony with reference to those events, but I do not think I need make any findings upon it; so I do not.

In taking that view in relation to the value of any such testimony in relation to the Report, I am not to be taken as indicating that the alleged events or circumstances should not have been of interest to the Society in their management of Kim's file or that the Society should not have attempted to investigate them.

The Society's personnel were aware of some, if not all, of the various stories told by Mrs. Popen as to her life in Jamaica. On the basis of testimony given by various expert witnesses as to matters which may be regarded as "danger signals" or as indicia of the possibility of child abuse, some of those stories must surely have been recognized as danger signals and thus should have been explored by the Society.

I appreciate that there would be difficulties in making any such exploration, but the Society made no effort to initiate or pursue it.

Mrs. Popen's testimony as to some of those events in Jamaica was subject to some of the frailties which led me to make the general condemnation of her testimony that I have set forth. Some of her testimony as to those events contradicted some statements which other persons testified were made to them by her. In some instances she acknowledged that she had made the statements attributed to her by other witnesses and that such statements were false.

As to the first recorded injury to Kim, that which resulted in her hospitalization in March 1975, Mrs. Popen gave various explanations to various people at various times.

On Kim's admission to hospital, Mrs. Popen told Dr. Thorp a variety of stories within a short time and very quickly. They involved statements variously that Kim had fallen from her crib or from a dresser drawer used as a crib. One story included reference to a baby-sitter being involved somehow in the injury. Another story included reference to Kim's having been lifted in such a way as to break her arm.

While Kim was in hospital, Mrs. Popen spoke with Dr. Singh. She told him that while she was changing Kim's diaper she heard a click in Kim's left arm while straightening it. She said she then brought Kim to the hospital.

While Kim was in hospital, Mrs. Hewitt in performing her duties as Acting Head Nurse, spoke with Mrs. Popen. Mrs. Popen in a short period gave Mrs. Hewitt a variety of explanations for Kim's injury. One explanation was that Kim's arm was

broken while Mrs. Popen was dressing her; this was later refined by Mrs. Popen saying that Kim's arm had snapped while Mrs. Popen was pulling the arm through a sleeve. Another explanation was that Kim had fallen from a table.

Upon the application of the Society for wardship of Kim heard on February 25, 1976, when Judge Nighswander asked her the following questions she made the following replies:

"Q. Yes. How did her arm get broken on the 22nd of March when the child was admitted?

A. Well, that was an accident when she had the broken arm the first time.

Q. How did that accident happen?

A. Well, I had the crib down and I had her in her little sitter, and she was very sick.

Q. I don't want to mix you up. I'm thinking now of the first time. The baby is only two months old the first time.

A. Yeah, she fall that time.

Q. Where did she fall from?

A. Had her out of her crib in her little sitter.

Q. She was in her sitter in the crib?

A. Yeah. I had her in a sitter.

Q. And she fell out onto the floor?

A. Yeah.

Q. And the second time--the 31st of August--how did those injuries take place? The injuries that I am talking about that I have been given in evidence. Everybody that observed them and the doctors say she had bruises on the elbow and both arms. She had a bruise on her cheek; a cut lip. In

the left arm there was a fracture. There were bruises around her ankles. Did you see those happen?

A. No."

Upon the Inquiry, Mrs. Popen acknowledged she had told a variety of stories to various doctors. She said some were true and some were false. In my view all were false in that they were essentially denials of her responsibility for Kim's injury.

Mrs. Popen's evidence as to that injury was that Kim was about six months old when she suffered the first broken arm. Clearly that is not so. Born January 11, 1975, Kim was only two months old when admitted to hospital with the first broken arm.

In her testimony Mrs. Popen denied that she had hurt Kim within six weeks of her birth. Mrs. Popen said merely:

"The first time she had a broken arm was an accident."

But the transcript of the proceedings upon the Inquiry contains the following series of questions put to Mrs. Popen by Counsel to the Inquiry and her answers thereto:

"Q. The injuries that Kimmy had as a small baby between her birth in January of 1975 and August of 1975, as far as you know today, you're responsible for all those injuries?

A. For some of them, yes.

Q. I'm talking about the broken arm when she was six weeks old, the, well the cut lip and the bruises?

A. Oh, okay. Yes, as far as I know.

Q. And she had a couple of cracked ribs?

A. Right.

Q. Can you tell us whether or not you're responsible for those?

A. I would say I am.

Q. Do you remember that incident at all?

A. I don't remember the day, but sure I can remember, yes.

Q. Was it temper thing again?

A. Yes."

In cross-examination, Mrs. Popen denied she caused this injury. She said she left Kim sitting in a sitter on the edge of the crib, which was down and "the thing went over." She said she learned of the injury when giving Kim a bath because Kim cried each time Mrs. Popen touched her.

In further cross-examination upon the Inquiry, Mrs. Popen was asked a series of questions relative to her responses to Judge Nighswander. I think those questions in cross-examination and her answers to them are revealing of Mrs. Popen's standards of truth in testimony.

They were as follows:

"Q. Well, Mrs. Popen, I'm having some difficulty understanding why, when His Honour asked you a question about the break in her arm on the 31st of August you went and told him about her falling out of the crib?

A. Cause she did fall out of the crib, I just didn't tell him what else had happened.

Q. Yes. Well, you lied a little about how her arm was broken on the 31st of August, didn't you?

A. I told him that she fell out of the crib which was true.

Q. But that's not how she broke her arm?

A. No, but I didn't get into detail, so I wouldn't call that lying because I didn't get into it.

Q. Well, he asked about how the arm was broken and you didn't tell him?

A. Well, I told him she fell out of the crib, and it was true.

Q. Yes, but the part about how the arm was broken was not true?

A. No."

Upon the basis of the expert medical evidence presented by Drs. Singh, Thorp and Bates, I am satisfied and find that none of the explanations given by Mrs. Popen for Kim's broken arm in March, 1975 is compatible with the nature of the injury and Kim's age at the time. Each of her explanations was a lie.

That being so and in the utter absence of any evidence to support any suggestion that anyone else may have been involved in such injuries, I find that Kim's injury leading to her hospitalization in March, 1975 was caused by Mrs. Popen and it was not caused accidentally.

I am reassured in that finding by Mrs. Popen's testimony upon the Inquiry as to her temper and her subsequent abuse of Kim. Included in that testimony was the following question and her response thereto:

"Q. Oh, so that anything that happened to Kim up to March of 1975 was just an accident?

A. Not all of it, no."

I am satisfied that when Dr. Jumeau saw Kim on June 6, 1975, she displayed the bruising of her arm, laceration of her lip and abrasion of her face which he noted.

In the absence of any reliable evidence even to suggest, let alone prove, that such injuries

were the results of the actions of any other person and on the basis of my assessment of Mrs. Popen and her testimony, I am satisfied that those injuries were caused by Mrs. Popen and they were not caused accidentally.

I am similarly satisfied that at some time in June, July or August, 1975, Mrs. Hewitt did see Kim and that Kim displayed the black eyes and bruising around the face which Mrs. Hewitt described.

For the reasons already stated, reinforced by Mrs. Hewitt's testimony as to Mrs. Popen's behaviour at that time, I am satisfied that those injuries were caused by Mrs. Popen and they were not caused accidentally.

By reason of the uncertainty expressed by Mrs. Hewitt as to the date on which she observed those injuries, I am unable to determine whether they were the same injuries as were seen by Dr. Jumeau on June 6, 1975 or whether they were a separate and distinct group of injuries or whether they were suffered coincidentally with the fractures of Kim's ribs revealed by X-rays taken by Dr. McCrudden on September 1, 1975.

As to those fractures of Kim's ribs, on the basis of Dr. McCrudden's testimony, I am satisfied that they occurred three to four weeks prior to September 1, 1975.

For the reasons I have already stated I am satisfied that those fractures of Kim's ribs were caused by Mrs. Popen and they were not caused accidentally.

For the same reasons I am satisfied that all of the injuries to Kim revealed upon her admission to hospital on August 31, 1975, were caused by Mrs. Popen and were not caused accidentally.

For the same reasons, and notwithstanding Mrs. Popen's testimony denying that she caused some of the injuries revealed upon the post-mortem examination of Kim's body by Dr. Patodia on August 12, 1976, I am satisfied that all of the injuries revealed upon that post-mortem examination, including those specifically or generally denied by Mrs. Popen,

were caused by Mrs. Popen and were not caused accidentally.

I am further satisfied that those injuries were suffered by Kim within the various periods of time which Dr. Patodia estimated, that is, the majority of the injuries were suffered within one to five days prior to Kim's death on August 11, 1976, the vaginal injuries were suffered within a few weeks prior to death and the rectal injuries were suffered over a prolonged period of several weeks or months prior to death. On the basis of Mrs. Maughan's evidence as to her observations of Kim on August 8, 1976 it would seem that injuries to Kim's head and the parts of her body which would have been exposed to view by Mrs. Maughan were suffered after Mrs. Maughan's visit of August 8, 1976 or even after Mrs. Kuly's visit of August 10, 1976.

Chapter XIII

The Role of Annals Ambrose Popen

In my view, Annals Popen is a pathetic figure, but not deserving of pity. None of the evidence presented upon the Inquiry satisfies me that he inflicted any injury upon Kim.

I am satisfied that for whatever reasons, naivety, stupidity, wilful blindness or some other reason, he was not prepared to recognize the significance of what was happening in his home. At least by February 25, 1976 when proceedings in the Provincial Court (Family Division) of the County of Lambton, were virtually complete he had heard the extent of the injuries suffered by Kim to that time.

The question remains as to whether he knew or ought to have known that Kim suffered the various injuries which are set forth in earlier portions of the Report with the possible exception of any inflicted upon her on August 11, 1976.

In my view the validity of the Report does not require any comment by me upon that issue.

I am satisfied that the frequency, severity and nature of the various injuries should at least have aroused suspicion in his mind as to the causes or sources of the injuries and the truthfulness of whatever Jennifer Popen told him with reference thereto.

I find it unbelievable that he could be led to think that he broke Kim's arm by having hit her with a thrown slipper.

I am satisfied that he wanted Kim to be returned to his home. For that reason and probably other reasons, including the truth of the allegation that he failed to protect Kim, he was prepared to plead guilty to the charge against him under section 40 of The Child Welfare Act and to attempt thereafter

to fulfill the terms of the probation order against him and also any requirements which he felt were imposed upon him as a result of the decision of Judge Nighswander upon the application of the Society for wardship of Kim.

I am satisfied that from May 27, 1976 until her death, Annals Popen failed to take adequate steps to protect Kim. For some reason he was unable or unwilling to take those steps.

I have not relied upon the testimony of Annals Popen. I decided it was unreliable. He claimed to have a poor memory. He was not prepared to recognize what was happening in his home. He gave no adequate explanation for that.

In Chapter 4 of the Report I have reviewed the proceedings in the disposition of the charge of manslaughter laid against Annals and Jennifer Popen. As directed by the Judge sitting in the Court of General Sessions of the Peace at Sarnia on December 7 and 8, 1981, upon a new trial of Annals Popen ordered by the Court of Appeal, the jury returned a verdict of "not guilty."

Chapter XIV

The Role of Mabel Harvey

Apart from Jennifer Popen and Annals Popen, Mabel Harvey was the most important person in Kim's life from June 17, 1975 until Kim's death on August 11, 1976.

Mrs. Harvey's involvement in Kim's life, and its tragedy, began on June 17, 1975 when Mrs. Saul reported to her orally and with some written notes upon the visit made that day by Mrs. Saul, Mrs. Hoad and Police Constable Gander to see Kim.

I am satisfied that Mrs. Saul adequately informed Mrs. Harvey of the particulars of that visit and the concern that Mrs. Saul felt. In addition, Mrs. Saul's report to Mrs. Harvey contained comment upon the attitude of Jennifer Popen and of the relationship between Jennifer Popen and Annals Popen. The written portion of Mrs. Saul's report to Mrs. Harvey contained latterly the following sentences:

"I told Jennifer that C.A.S. would be around to see her in a week or so, but she was not pleased about this. I believe it would be advisable to take a L.H.U. nurse and introduce her whether Jennifer wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks."

Mrs. Saul testified that the portion of the Society's file recording purporting to have been prepared by her as her report and recommendation upon her visit was an accurate reproduction of her notes although some particulars of the Popen family appear in it at the end of the recording attributed to her, while known to her, had not been written by her. They were as follows:

"Jennifer Popen - 18 years (quite immature)
- hostile, defensive.

Dr. Jumean - family physician - 337-3729.

Annals Popen - 30 ish in age, meek, bows down to wife's hostility, is said to drink heavily, is on strike at present."

Mrs. Saul had not seen the typewritten recording until she was preparing to testify upon the Inquiry and she had not seen her handwritten notes since giving them to Mrs. Harvey on June 17, 1975. The handwritten notes were not available to the Inquiry. It was presumed by various members of the staff of the Society who testified that they were destroyed when the typewritten record was prepared. Thus her purported confirmation of the accuracy of the typewritten version must be limited to being based on her recollection of what she had written by hand and is thereby made subject to the frailties or vagaries of her memory of events which occurred more than three years before she testified upon the Inquiry.

There may very well have been other errors, omissions or additions which Mrs. Saul did not notice. There is no direct evidence to suggest it, but it may very well be that the particulars of the Popen family which Mrs. Saul says were added to her written report were added by Mrs. Harvey to Mrs. Saul's handwritten notes and thus were typed as part of them.

In her oral testimony upon the Inquiry, Mrs. Saul elaborated upon the nature of her report to Mrs. Harvey and Mrs. Harvey's response to it. Mrs. Harvey's testimony upon the Inquiry did not challenge or deny the accuracy of Mrs. Saul's testimony.

In her summary to Mrs. Harvey she explained her concern for Kim's welfare. She said she felt there was a good possibility that Kim had been abused and that she would be abused again. She felt the situation was one of danger for Kim, but not one of immediate danger. Her concern for the future was based on Jennifer Popen's reaction to Mrs. Saul and on Kim's restiveness while with Jennifer Popen.

While she had a real concern that Kim had been abused, she was unable at that time to suggest who had abused her. As to the relationship between Jennifer Popen and Annals Popen, Mrs. Saul felt that Jennifer Popen was the dominant partner, but that did not enable Mrs. Saul to determine who was abusing Kim.

Mrs. Saul's report to Mrs. Harvey was a detailed report. She said her recommendation to Mrs. Harvey was that the case should be assigned at once to a long-term worker. Mrs. Saul's opinion was that it was obvious that the Popen family would require the long-term involvement and assistance of the Society.

Mrs. Saul was at that time in her career employed by the Society to conduct investigations and counselling in matters requiring short-term involvement by the Society.

Mrs. Saul testified that Mrs. Harvey accepted her report and recommendation and mentioned the possibility that the case would be assigned to Mr. Carter, a long-term worker. The name of no other long-term worker was mentioned by Mrs. Harvey to Mrs. Saul.

Mrs. Saul's opinion was that with the decision that the case required long-term involvement by the Society a file should have been opened. She had prepared a handwritten memorandum upon her visit and her recommendation. She intended that memorandum to be typed and then placed in the file. She gave that handwritten memorandum to Mrs. Harvey. Mrs. Saul did not feel that she had any responsibility in connection with the administrative work necessary to open the file, document the intake of the case or to effect the assignment of the case to Mr. Carter or anyone or even to arrange for the typing of her report for inclusion in the file. Her opinion was that, while her short visit and investigation had been productive, a lot more remained to be done and to be discovered. She believed the case would require close long-term supervision.

Mrs. Saul testified that on June 17, 1975 she had directed her attention only to the possibility of Kim's having been abused at a time

relatively concurrent with the visit of Police Constable Gander to the Society. She said that the worker to whom the case was to have been assigned after her discussion with Mrs. Harvey would have been responsible for investigation of any suggestion of any prior instance of abuse to Kim. By reasonable inference that would include enlargement of Mrs. Saul's inquiries as to the June 16, 1975 report to the Sarnia Police Force. As indicated in the portion of Mrs. Saul's notes which is set forth above, Mrs. Saul was made aware of the suggestion that Kim had been abused during "the recent six weeks." In her oral testimony she said that Police Constable Gander had mentioned that Kim had suffered earlier injuries. Mrs. Saul gave Mrs. Harvey all of that information.

I am satisfied that on June 17, 1975 Mrs. Harvey assumed responsibility for the preparation of all documentation and the performance of all acts necessary to record the fact of the intake of Kim's case, the opening of the file, the entry of Mrs. Saul's report into the file together with any other relevant information and the assignment of the case to a long-term worker, perhaps Mr. Carter.

The members of the Farina Committee testified that Mrs. Harvey's failure to effect the assignment of Kim's care on June 17, 1975 was a serious mistake. The gravity of that mistake was apparent throughout the Inquiry.

It was not Mrs. Harvey's only mistake at that time. She, and thus the Society, did not comply with Regulation 86, Revised Regulations of Ontario, 1970, being the Regulation made under The Child Welfare Act. Section 14 of that Regulation requires children's aid societies to record and investigate complaints respecting children in need of protection. Any such complaint is to be recorded by a children's aid society within twenty-four hours of its receipt. Within twenty-one days of recording such a complaint, the children's aid society must investigate the complaint and record a report determining whether or not the child mentioned in the complaint is in need of protection. If the child is in need of protection, the children's aid society must set forth in that report a tentative plan for the child's welfare and the steps taken to implement the plan. If the child is not taken into protective custody, the

children's aid society must review the case within sixty days after the complaint was recorded.

Mrs. Dick, Mrs. Saul and Mrs. Hoad acted promptly to respond to Police Constable Gander's report to the Society. Mrs. Dick assigned Mrs. Saul and Mrs. Hoad to accompany Police Constable Gander. They did accompany him and Mrs. Saul reported promptly to Mrs. Harvey. All of that was within a few hours of Police Constable Gander's visit to the Society.

Nothing that Mrs. Dick did constituted a 'record' of the complaint. The Society, as represented by Mrs. Harvey, Mrs. Saul and Mrs. Dick, was aware that what was done that day did not constitute an investigation of the complaint. It was recognized by them as merely the initial response of the Society to the complaint respecting Kim. It was only the first exploratory phase of an investigation. No effort was made to investigate the reports of earlier injury and hospital treatment.

No "record" of that initial response was prepared. Mrs. Saul's notes could have been the basis for that record, but they were not in themselves the "record" contemplated by the Regulation.

There was no recorded determination as to whether or not Kim was in need of protection. Mrs. Saul's notes and her oral report to Mrs. Harvey were tentative. Mrs. Saul was concerned. She felt the case would merit the long-term involvement of the Society. Mrs. Harvey accepted Mrs. Saul's recommendation that Kim's case be assigned at once to a member of the long service team of the Society's workers.

Upon receipt of Mrs. Saul's notes and oral report, Mrs. Harvey assumed full personal responsibility for the case. Thus she was responsible for the recording of the complaint and the investigation of it. She was responsible for the preparation and recording of the report of that investigation and the determination whether or not Kim was in need of protection.

Thus, Mrs. Harvey failed to comply with the provisions of Section 14 of Regulation 86.

If the investigation had justified a determination that Kim was in need of protection, Mrs. Harvey would have been responsible for the preparation and recording of the tentative plan for Kim's welfare. In retrospect it would seem that if the appropriate investigation had been undertaken and completed, the Society would probably have been justified in determining that Kim was a child in need of protection.

No such tentative plan was recorded. In the circumstances of the investigation being incomplete and no determination of Kim's need for protection having been made, the absence of a recorded plan for her welfare is understandable in June 1975. But that does not excuse Mrs. Harvey who bears responsibility for the absence of such a plan.

But the recording in the Society does not set forth any plan for Kim's welfare at any time. After August 31, 1975, Mrs. Harvey was not responsible for the initial recording of such a plan, but, as Mr. Carter's supervisor, she was responsible to ensure that he prepared and recorded such a plan.

By August 31, 1975 Kim was in the *de facto* care of the Society. The Society had determined by then, or soon after, that Kim was in need of protection. A plan for Kim's welfare should have been prepared and recorded within twenty one days after August 31, 1975. It was not done. As supervisor, Mrs. Harvey was responsible for that failure to comply with the Regulation.

The members of the Farina Committee testified as to a lack of knowledge within the Society as to the provisions of The Child Welfare Act. At best this would seem to be one example of such lack of knowledge.

I have said Mrs. Harvey's testimony did not deny or challenge Mrs. Saul's testimony. Mrs. Harvey did offer some suggestions as to some further details of her discussions with Mrs. Saul, but they were vague and they were not supported by any other testimony.

In various areas of her testimony, Mrs. Harvey claimed to have difficulty in remembering the

details of various events because they had happened so long ago. I can sympathize with her in that dilemma. I have recognized it when I commented upon my suspicions as to the validity of Mrs. Saul's testimony that the typewritten recording in the Society's files under date of June 17, 1975 was an accurate transcription of her handwritten notes.

But Mrs. Harvey had at least one specific occasion when she could have prepared some notes which would have been based on relatively recent memory of the events of June 17, 1975 and immediately thereafter. That occasion was the involvement of the Society in Kim's life on August 31, 1975 and immediately thereafter. At any time thereafter Mrs. Harvey could have made notes that could have had more validity than her admittedly poor memory after the passage of three years.

In my opinion the events of August 31, 1975 were such that Mrs. Harvey should then have prepared a full and accurate record of what occurred on June 17, 1975 with a frank statement as to the failure of the Society, as represented by her, to take steps then to investigate the allegations of earlier incidents of injury and the report of June 16, 1975 and generally to provide adequate service to Kim and to her family.

Mrs. Harvey had a second specific occasion when she should have been stirred to prepare some written record of the events of June 17, 1975. That second occasion was Kim's death slightly more than eleven months after August 31, 1975. Admittedly such notes would not have the same value as notes made in June or September, 1975, but they would be better than unsupported memory in mid-August, 1978. They would not have helped Kim. They may have been of assistance to the Society and others, including those engaged upon this Inquiry.

No one who testified upon the Inquiry knew where Mrs. Saul's handwritten report to Mrs. Harvey along with Mrs. Dick's recording of her activity upon Kim's case on June 17, 1975 had been from June 17, 1975 until they were reduced to typewritten form for inclusion in the Society's files. Mrs. Dick found her notes of June 17, 1975 in the vault at the Society's office in September, 1975. I interpret

Mrs. Dick's testimony to mean that she found Mrs. Saul's notes of June 17, 1975 at the same time. Mrs. Dick testified that she then arranged for a typist to prepare a typewritten transcript of both sets of notes.

On the basis of Mrs. Saul's testimony, direct and uncontradicted, that she gave her handwritten notes to Mrs. Harvey on June 17, 1975 I find that those notes remained in Mrs. Harvey's possession and control from June 17, 1975 until reduced to typewritten form in September, 1975 on Mrs. Dick's instructions. I find that they were then destroyed or discarded.

On the basis of Mrs. Dick's testimony, not as certain as Mrs. Saul's, but sufficient, I am satisfied to a similar effect with reference to Mrs. Dick's notes of June 17, 1975. Mrs. Dick gave them to Mrs. Saul who then gave them to Mrs. Harvey who retained them. At some time after August 31, 1975, Mrs. Dick found them in the vault at the Society's office and had them reduced to typewritten form. They were then destroyed or discarded. Mrs. Dick could not recollect where she had located them in the vault in September, 1975.

On the basis of Mrs. Saul's direct evidence uncontradicted, and indeed corroborated by Mrs. Dick's testimony as to a conversation she had with Mrs. Harvey on June 17, 1975, I find that Mrs. Harvey advised Mrs. Saul of her acceptance of the recommendation that the case be assigned to a long-term worker and mentioned Mr. Carter as a possible recipient of that assignment. Mrs. Dick's version of her conversation with Mrs. Harvey was somewhat more definite that Mr. Carter was the one to whom the case would be assigned.

I am satisfied and find that on June 17, 1975 Mrs. Harvey assumed direct responsibility for Kim's case. Mrs. Harvey alone was responsible for the handwritten notes of Mesdames Dick and Saul, which she received on June 17, 1975, being placed in the vault at some time without any further action. Nothing was done to make any entry in the file index to record the opening of the file. Nothing was done to record those notes in the file. Nothing was done to effect or record the assignment of the case to a

long-term worker such as Mr. Carter. In her testimony Mrs. Harvey accepted that responsibility and whatever might flow from it. Indeed her position was that Mrs. Saul had been acting on her instructions to prepare the handwritten notes which Mrs. Harvey said were destroyed when transcribed in typewritten form as they now appear in the Society's files.

Thus on June 17, 1975, Mrs. Harvey failed to fulfill her responsibility. Having relieved Mrs. Saul of further involvement in the case, Mrs. Harvey failed to complete whatever was required administratively to record the case, to open the file, to put the appropriate notes in the file and to assign the case to a long-term worker for further appropriate investigation of all instances of possible abuse and for appropriate long-term service to the Popen family.

As a result of Mrs. Harvey's failure to perform her appropriate duties on June 17, 1975, Kim's case was unattended until the end of August, 1975. Notwithstanding the well-expressed concerns of Mrs. Saul and Mrs. Harvey's acknowledged recognition of the validity of those concerns, nothing was done by the Society in respect of Kim's case. There was no investigation of any of the instances of alleged injury and possible abuse. There was no investigation to determine the situation in the Popen home. There was no investigation to seek to determine whether Kim might be a child in need of protection under the terms of The Child Welfare Act. No service to the Popen family was provided by the Society.

Mrs. Harvey testified that normally upon receipt of a report such as she received from Mrs. Saul on June 17, 1975, she would have had someone immediately begin an investigation of the situation in the home. That would have been an appropriate action by Mrs. Harvey. It would have required her continued attention.

Even on the basis of Mrs. Harvey's evidence I am satisfied that her failure to fulfill her duties and thus those of the Society from June 17, 1975 until August 31, 1975 was of serious importance in the development of Kim's tragedy. Had Mrs. Harvey, and thus the Society, given to Kim's case the attention, investigation and service which it deserved

on and immediately after June 17, 1975 the serious injuries of July and August, 1975 and the injuries and resulting death of August, 1976 might have been prevented.

Mrs. Harvey in her testimony relative to what she regarded as the difficulties placed in the way of the Society from August 31, 1975 until February 23, 1976 was strong in her statement that those difficulties prevented the Society from doing the work with the Popen family which the Society knew had to be done. She said that contributed to the end result. In my view, the failure of Mrs. Harvey and thus of the Society from June 17 to August 31, 1975 contributed at least equally to that end result.

Mrs. Harvey acknowledged in her testimony that had the Society been providing service to the Popen family from June 17, 1975 and if Kim were nonetheless injured as she was found to be on August 31, 1975, the view of the Society as to the August incident would have been quite different. Answers given by Mrs. Harvey are informative in that regard.

When asked how the Society would have viewed the case differently in such circumstances she replied:

"A. Well, if you had put in three months of case work, which I would have expected to have been on an intensive basis and which is what I had planned and this happened, then I wouldn't have sent her back.

Q. You wouldn't have sent her back?

A. No.

Q. Why would you not have sent her back?

A. Well, if the three months of intensive work had ended up with the child in the hospital then I would say, no."

That testimony shows the importance of Mrs. Harvey's default in June, 1975. I realize that various conditions were contained in that series of responses and thus it was theoretical. Nonetheless it is fair to say that Mrs. Harvey's default had an

effect which continued beyond June, July and August 1975.

Mrs. Harvey's responses tell me she knew that.

Mrs. Harvey testified that Kim's case had been discussed at a meeting of the workers of Team I, the team responsible for short-term cases. She said that meeting of Team I had been held on June 17, 1975 at 1:30 o'clock in the afternoon. She said she was pretty sure the case was discussed at that meeting because she was so concerned about the seriousness of the situation.

Mrs. Saul, a member of Team I, disagrees with Mrs. Harvey. She says a meeting of Team I would have been held on June 17, 1975, but in the morning before she went to see Kim. She insists Kim's case was not mentioned at that meeting. She said that if a decision had already been made to assign a case to the Long Service Team, that case would not necessarily be discussed at the Short Service Team meeting. Her recollection was that she had been assigned to see Kim after the meeting on that day.

Mrs. Dick also a member of that Short Service Team, testified that Kim's case was not discussed at a Team I meeting. She felt that might have been because of Mrs. Harvey's intention to assign the case to a long-term worker because it would require long-term involvement by the Society.

The third member of Team I did not testify. Minutes of Team I meetings for the relevant time period were available. They do not support Mrs. Harvey's testimony. They contain no mention of Kim's case until the meeting of September 2, 1975 when the case was formally opened.

While it may appear unnecessary and irrelevant to reach any conclusion on the point, I prefer the testimony of Mesdames Dick and Saul to that of Mrs. Harvey and find that Kim's case was not discussed at any meeting of Society's workers on June 17, 1975 nor at any time thereafter before September 2, 1975.

Mrs. Harvey also testified that Kim's case had indeed been opened by the Society in June, 1975. She based that on an entry made by Mrs. Dick in a log of cases. That log is not a printed form. It appears to have been prepared by someone hand drawing lines on plain paper so as to create eight columns with various handwritten headings. The entry in that log relied on by Mrs. Harvey to justify her statement that the case was opened was as follows:-

"Date	Worker	Intake Identi- fication	Referred by	Referred to	21 Day Revised	Disposition	60 Day Revisted
June 17	AD	Popen, Jennifer and Annals - possible child abuse of Kim age 6 months	Detective Gavin (sic) "abuse"	HC		open to HC Sept/75	Team II June Review No. 1"

The complete accuracy of that log, like so many other records of the Society must be questioned. The entry preceding the reference to Kim is dated June 16. The entry following the reference to Kim is dated June 18. But the next entry, originally dated June 19, was changed to June 17th and the next item was also dated June 17.

All five of the entries on the page from that log introduced as an exhibit upon the Inquiry were made by Mrs. Dick who was then employed as an intake worker. Mrs. Dick testified that was a page from a daily log of calls coming in to the Society to enable Team I, responsible for short-term investigation and service, to know what cases were current in the team and who on the team was responsible for each case. Mrs. Dick said that she had written the information in the first five columns on June 17 as well as the words "open to H.C." and "Team II" in the last two columns. She said those latter entries were merely to record Mrs. Harvey's intention to assign the case to Mr. Carter and to record that the case would no longer be a responsible of Team I. Mrs. Dick made the remaining notations in September, 1975.

On all of the evidence as to what seems to me to have been a cumbersome uncoordinated system to open files in the Society, I do not accept Mrs. Harvey's assertion that Kim's case was opened by Mrs. Dick's notation on the log. None of the other papers or cards ordinarily associated with a case opening were prepared, the case name was not placed in the index of files and the notes which Mrs. Saul and Mrs. Dick prepared for inclusion in the file were not transcribed, but, for all practical purposes, were mislaid or lost.

Mrs. Harvey was simply being difficult with counsel to the Inquiry when she adopted that position. It was not supported by the facts and she knew it.

She attempted to justify the absence of a document entitled "Record of Inquiry" in June, 1975 by saying it would not be needed during a "brief service case" which, she said, was any case which could be completed within twenty-one days. That reference was merely obfuscation. On June 17, 1975 she knew and acknowledged to Mrs. Saul and to Mrs. Dick that Kim's case would not be resolved within twenty-one days and would require the services of someone on Team II, the long service team.

Mrs. Harvey was not being frank even with herself to suggest that Mrs. Dick's notes on the log supported her assertion that Kim's case had been opened in the Society on June 17, 1975. Even by whatever standards the Society may have applied in June, 1975 those notes did not constitute a case opening. On Mrs. Dick's evidence the log was maintained to assist the members of the Short Service Team seek some control of cases assigned to workers on that team. Kim's case was not such a case. Only by chance would that log bring Kim's case to the attention of any member of the Long Service Team.

Mrs. Harvey showed some disdain for proper procedures when she said that it was practically impossible to use the form entitled "Record of Inquiry." That is a printed form apparently prepared by the Ministry of Community and Social Services or the Association of Children's Aid Societies for use by children's aid societies. Despite Mrs. Harvey's comment upon its usefulness that was the form used by

Mrs. Dick when she formally opened Kim's case in the Society on September 2, 1975. Mrs. Dick, Mr. Carter, Mrs. Lo and even Mrs. Harvey herself were able to use it from then on without too much apparent difficulty in maintaining a proper sequence of recordings.

That then was the way things stood until late in August.

Mrs. Harvey acknowledged having heard Mr. Carter's testimony upon the Inquiry wherein he said he had not heard of Kim's case as one of his responsibilities until after the weekend of August 31, 1975. He said he had not spoken with Mrs. Harvey about the case until September, 1975. She was asked to comment upon that testimony.

Her reply began as follows:

"I don't know what happened to this and at this length of time I can't tell you what happened. I took it out to give it to Mr. Carter and I don't know whether I actually did it or not. I intended to give it to him, whether it got mixed up in the typing or what, I don't know, but I didn't run across it until August the 29th and I don't think I have ever been so upset at anything in the office as I was at that."

When asked what happened on August 29, 1975 she answered:

"My memory of it is that I checked to see what was happening with this case that had been, that had come in in June and called Mr. Carter into my office and told him to get in touch with the police, I won't use my exact phrases and let me know immediately the state of the case insofar as the police were concerned."

"I remember asking Mr., telling Mr. Carter to phone immediately and to report back immediately he had talked to the police."

When asked what Mr. Carter had reported to her she answered:

"That he had talked with Detective Gander of the city police about making a home visit and was told the current situation with the police and parents was most volatile and we should hold off and that he would send in a parents' (sic) [occurrence] report and also keep the home under surveillance and report back, but we never received a report."

As I have noted in Chapter VI that whole series of responses is directly contradicted by Mr. Carter's testimony which is supported in part by Police Constable Gander's testimony.

Mr. Carter denied that he had any such conversations with Mrs. Harvey on August 29, 1975. He said he did have a brief and casual conversation with Police Constable Gander, but while it related to Kim it was not initiated by him and he did not then know that he was in any way connected with Kim's case. He said he had made a note of that conversation and passed it to the intake department for recording. He relied on the recording in the file to fix the date of the conversation as August 29, 1975. He acknowledged that the recording in the file was not an exact transcription of his notes.

Police Constable Gander had no recollection or record of having spoken with Mr. Carter on August 29, 1975, but specifically denied that he had spoken as Mrs. Harvey claimed was reported to her.

As I have said, I prefer the combined evidence of Mr. Carter and Police Constable Gander, notwithstanding the possible inconsistency as to their having spoken on August 29, 1975. Even if they did speak it was merely informally as Mr. Carter says and was not the result of Mrs. Harvey's having roused Mr. Carter to action as she suggests.

Having seen and heard Mrs. Harvey as she testified and having noted her dominating manner and her force of expression, I am sure that had she spoken to Mr. Carter as she says she did he would have remembered it and would not deny that it occurred.

Mrs. Harvey offered no explanation as to how she had "run across it," to use her expression, or why she decided on August 29, 1975 to check to see what was happening with the case. It had lain dormant from June 17, 1975. For more than ten weeks no one in the Society had done anything about it. There was no testimony to suggest that it in anyway was a subject of discussion amongst the Society's employees during that time. There was no testimony that anyone within or without the Society had spoken to Mrs. Harvey about Kim's case after June 17, 1975. There was no testimony that any document, however informal, relating to Kim's case had remained in Mrs. Harvey's office.

I am not prepared to accept Mrs. Harvey's testimony that for some unexplained and unremembered reason a case, which had been unattended for so long and which was not formally opened within the Society and to which no worker had been assigned, would suddenly come to her attention. I am aware that August 29, 1975 was the Friday preceding the Labour Day Holiday and it was during the period of staff vacations; so Mrs. Harvey would have been more burdened then she was ordinarily.

Mrs. Harvey offered no explanation as to why on August 29, 1975 she ordered Mr. Carter to contact the Sarnia Police Force. Mrs. Saul's oral report to Mrs. Harvey on June 17, 1975 and her notes given to Mrs. Harvey had indicated her view that the Lambton Health Unit should have some involvement in the case. Mrs. Saul did not orally or in writing suggest to Mrs. Harvey that the police should be involved. Until then the only connection which the Sarnia Police Force had with the case was to relay to the Society the contents of Dr. Jumeau's telephone call of June 16, 1975 and then to accompany Mrs. Saul and Mrs. Hoad to see Kim. I see no reason for Mrs. Harvey on August 29, 1975 wanting Mr. Carter to call the police. There was no indication anywhere that the Sarnia Police Force would have any reason to have any information beyond what was given to the Society on June 17, 1975.

That lack of explanation for what seems to be an unusual instruction to Mr. Carter strengthens my belief that Mrs. Harvey's testimony relating to August 29, 1975 is not credible.

If the alleged incident of August 29, 1975 had occurred, and if Mrs. Harvey had been as disturbed as she said she had been, I would have expected it to have been more firmly placed in her memory than her testimony indicates. She would have recalled, even three years later, what brought about the spurt of activity and inquiry. Even her notes which she says she dictated on August 29, 1975 are devoid of any expression of her supposed consternation upon finding that nothing had been done with reference to the matter.

I have reproduced those notes at a later point in this Chapter and have expressed some comment thereon.

In the same vein I note Mrs. Harvey's own testimony that when the file was, at last, formally and properly opened on September 2, 1975, the date of its opening was recorded as being August 31, 1975 because

"we wanted to get it in on the August statistics...statistics were very important...[for] money."

If that be so and if Mrs. Harvey had initiated some activity on August 29, 1975, and if she was as concerned about the case as she indicated she was, I can only wonder why she would not have opened a file on August 29, 1975. My wonderment reinforces my finding that nothing such as Mrs. Harvey described occurred on August 29, 1975.

I do not accept Mrs. Harvey's evidence as to what she says occurred on August 29, 1975.

However, even if Mrs. Harvey had remembered Kim's case and made some enquiry about it on August 29, 1975, it would not have made a great deal of difference unless she had taken some positive step to ascertain what the conditions were that day in the Popen home.

A report such as Mrs. Harvey says she received from Mr. Carter should have caused her a good deal of concern for the safety of a child in a "volatile" situation. Kim's protection was the responsibility of the Society by reason of The Child

Welfare Act and its own documents of incorporation. There is no provision for the Society to delegate or assign any of its responsibility to any other agency, institution, authority or person even though that other may be given certain powers and duties under The Child Welfare Act.

Thus, in my view, had Mrs. Harvey received a report of a volatile situation in the Popen home neither she nor the Society should have refrained from taking steps to ensure Kim's safety. She should have instructed Mr. Carter or some other worker to make further inquiries of the Sarnia Police Force and elsewhere and to conduct whatever investigation might have been required to ascertain whether Kim was a child in need of protection. That obligation on Mrs. Harvey and the Society is all the more apparent where, as here, there was some indication of prior abuse and a serious concern for Kim's welfare already expressed by members of the Society's personnel, including Mrs. Harvey.

If Mrs. Harvey had received such a report from Mr. Carter based on his conversation with Police Constable Gander there was at once an obligation upon her, as a supervisory officer of the Society having direct responsibility for the case, to ensure that the Society took immediate steps to fulfill its statutory and corporate duty to protect Kim. Mrs. Harvey did not meet that obligation. The Society did not fulfill its duty. Kim was injured.

I am not to be taken as suggesting that the Society should have proceeded in isolation from the Sarnia Police Force and in disregard of that Force's wishes. The concerns of the Society should have been discussed with the Force and then both should have jointly decided upon what was necessary to ensure Kim's protection. In any such discussion the Society position should have been that Kim's protection was its paramount concern and in no event would it permit her to be left or placed in any danger.

Mrs. Harvey sought, even in her testimony upon the Inquiry, to avoid or minimize criticism for her default in June, 1975. She sought to create the impression that she, without any incident external to or within the Society, had discovered the default and

had set about to remedy it before Kim suffered her next group of injuries.

I have found her efforts to be futile. Even if she had succeeded she would have been exposed to just as severe criticism for her failure to act responsibly as an officer of the Society on August 29, 1975 when, on the basis of her testimony, she had received various reports and information. On her evidence she knew that Kim was reported to be living in a "volatile" situation involving her parents and the Sarnia Police Force. She knew that there were reports of prior injury and hospitalization which had not been investigated in any way by the Society. She knew that Mrs. Saul had expressed concern for the need of long-term involvement of the Society and that she herself had concurred in Mrs. Saul's preliminary assessment of that need.

If I had accepted Mrs. Harvey's testimony as to what occurred on August 29, 1975, I would have found her to have been in breach of her obligations and duties in that she failed to take any action to protect Kim or even to seek to learn whether or not Kim might be in need of protection. The breach of duty on August 29, 1975 would have been even more deserving of criticism than the breach of duty on and after June 17, 1975 because, on August 29, 1975, Mrs. Harvey would have had even more reason to be concerned for Kim's safety than she had on June 17, 1975.

Had Mrs. Harvey succeeded in her attempt to avoid criticism in one area it would have served only to attract criticism in other areas.

Having again learned of Kim's case after August 31, 1975, Mrs. Harvey was again involved as the Supervisor of the Family Services Department of the Society.

I have already set forth some of her testimony as to events she says occurred on August 29, 1975. I have rejected that testimony. I want now to consider another facet and enlargement of that testimony.

The file in the Family Services Department of the Society contains two typewritten paragraphs which immediately follow what purports to be the

transcription of Mrs. Saul's notes of June 17, 1975. The two paragraphs with accompanying marginal notations are:

"June 19/75 This case was due for assignment to H.R.C. for service including Public Health nurses. There was serious concern that the mother might take off to Jamaica with the child in view of the way she had been observed handling her. There was apparently a misunderstanding about the opening of the case at that time.
H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most "volatile" and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received."

They are followed by a typewritten, not wholly accurate transcript of notes made by Mrs. Dick after her visit to St. Joseph's Hospital in the afternoon of Sunday, August 31, 1975. The marginal notation beside that transcript was typed "Aug. 29/75 Referral", but the figures "29" were stricken in ink and replaced in handwritten ink by the figures "31."

Mrs. Harvey continued her testimony to say that on August 29, 1975, she had dictated the two paragraphs beside the dates of June 19 and August 29, 1975. She said she had not dictated the longer item opposite the typewritten date of August 29, 1975 changed to August 31, 1975. She said the date of August 29, 1975 in the latter instance was because of a typist's error which came about because of the format of the Record of Inquiry. She had corrected that error and also an accompanying error which had changed the sequence of two pages of Mrs. Dick's notes.

Apart from that those paragraphs are incomplete, inaccurate and misleading. Anyone reading those paragraphs without the benefit of other testimony upon the Inquiry would be led to believe that the management of Kim's case be Mrs. Harvey and the Society was less woeful than it was.

Mrs. Harvey did not offer any explanation for her choice of June 19, 1975 as the date to be placed in the margin opposite the first paragraph she dictated.

All of the recording preceding it was opposite the date of June 17, 1975 and related to events which occurred on that date or were brought to the attention of the Society on June 17, 1975.

On reading that first paragraph without any other information about the matter, one might reasonably suppose that on June 19, 1975 in some way separate from the matters recorded under date of June 17, 1975, Mrs. Harvey had done or learned what is recorded in that paragraph. That supposition would be incorrect in several areas.

Firstly, nothing about the case occurred or was learned by the Society on June 19, 1975.

Secondly, the concern about Jennifer Popen taking Kim to Jamaica had been expressed by Mrs. Saul to Mrs. Harvey on June 17, 1975.

Thirdly, there was no "misunderstanding about the opening of the case at that time." Everyone involved in the case had the same understanding of the case. That understanding was that Mrs. Harvey on receiving Mrs. Saul's report and her notes and those of Mrs. Dick had assumed personal responsibility for performance of administrative procedures in connection with the case, had relieved Mrs. Dick and Mrs. Saul of any further or ongoing responsibility and had decided to assign the case to a long-term worker, possibly Mr. Carter. All of that occurred on June 17, 1975, not June 19, 1975.

Fourthly, the closing phrase "at that time" could lead one to believe that on June 19, 1975 the "misunderstanding" had been resolved. It had not. The case was in exactly the same position as when Mrs. Saul reported to Mrs. Harvey on June 17, 1975.

The incidence of omissions from and inaccuracies in the record continue in the second paragraph Mrs. Harve dictated.

I have already expressed my finding that the paragraph was dictated in September 1975 rather than on August 29, 1975.

I do not know if there is any significance in the fact that the marginal notation beside this second paragraph does not contain Mrs. Harvey's initials. There is no real consistency in the style of the records of the Society, but often, if not usually, the initials of the person dictating the item for a separate day are set out under the date.

The second paragraph could lead a reader who had no other information about the case into several possible errors.

Firstly, the expression "H.R.C. had talked with Detective Gander", especially when read in conjunction with the last sentence "no report was received" would indicate that that "talk" occurred prior to August 29, 1975 and long enough before August 29, 1975 to merit the critical comment that by August 29, 1975 no report had been received. Mrs. Harvey herself testified that Mr. Carter spoke with Police Constable Gander on August 29, 1975 after she had spoken to Mr. Carter.

Secondly, the first sentence would indicate that the "talk" was confined to a discussion about "a home visit." It does not indicate that Mrs. Harvey had spoken to Mr. Carter as she said she had and told him to learn for her "immediately the state of the case insofar as the police were concerned."

Thirdly, there is no indication that even until then the Society had failed to do anything.

On the testimony, and indeed even on the basis of common sense, I am satisfied that the Society maintained recordings such as were kept in both the Family Services Department and Children's Services Department files so that any worker later or otherwise involved in the management of the case might have a quite complete and accurate resume of what had occurred earlier or in connection with some other facet of the case and of what those involved earlier or otherwise had thought about the case.

The paragraphs dictated by Mrs. Harvey would not serve that purpose.

By reason of the administrative organization of the Society, the Family Services Department, as represented by Mrs. Harvey, as Supervisor, and by Mr. Carter, as social worker, retained prime responsibility for the management of Kim's case after Kim came into the care of the Children's Aid Society on August 31, 1975.

The Children's Services Department had responsibility for Kim's day-to-day care, including her placement in a foster home, but the Family Services Department had responsibility for the overall administration of the case. That included the provision of any services to Kim's parents and the preparation and presentation of the Society's application to the Provincial Court (Family Division) of the County of Lambton, which shall be hereafter in this Chapter called the "Court", for an order declaring Kim to be a child in need of protection and placing her in the care of the Society.

I am satisfied that promptly on September 2, 1975 the first regular operational day for the Children's Aid Society after Kim came into its care on August 31, 1975, Mrs. Harvey met with Mrs. Dick and received a complete report upon the events of August 31, 1975 and the information Mrs. Dick had received. I am satisfied that Mrs. Harvey then did whatever was necessary to ensure that a file was opened and that Mr. Carter was aware that he had been assigned responsibility for its management within the Family Services Department.

Even in recording that assignment of duty the written records of the Society are not entirely accurate. It is recorded simply "August 31, 1975 case opened to H.R. Carter." That would lead an uninformed reader to believe that Mr. Carter was assigned on August 31, 1975. He was not.

I understand the supposed reason for such a recording. I am satisfied there was no evil motive in recording the assignment in that manner. But it simply is carelessly and inaccurately stated.

As Supervisor of the Family Services Department, Mrs. Harvey maintained contact with Mr. Carter and was aware generally of what he did in performance of his duties. She had the responsibility to ensure that he properly and sufficiently performed those duties.

There is no recording within the files of the Society to indicate Mr. Carter's activities and opinions with reference to Kim's case apart from a quite lengthy item with a marginal notation of "September 1/75 - February 29/76" which Mr. Carter testified he dictated after Mrs. Harvey relieved him of responsibility for the case on February 23, 1976.

Thus for a period of about six months, from September 2, 1975 until February 23, 1976, Mr. Carter purported to perform his duties, but there was no written record of what he did, what he saw, what he heard or what he thought. There was no record that he was encountering any difficulty, that the case was in any way unusual or presented any special problem or that he had formed any opinion with reference to the case or its management and conclusion.

Bearing in mind the purpose of maintenance of written records and on the testimony upon the Inquiry, I am satisfied that it is not satisfactory for a case which was as serious as Kim's and which presented so many problems and difficulties as were mentioned upon the Inquiry to be devoid of written record for that period of time.

Mrs. Harvey's position required her to ensure that proper records of Kim's case were maintained. Such records would include Mr. Carter's notes. She failed to fulfill that duty.

I have mentioned Mrs. Harvey's failure in June 1975 to comply with the requirements of section 14 of Regulation 86, Revised Regulations of Ontario, 1970. In the circumstances that existed in June, 1975 that default was entirely hers. From August 31, 1975 there was a similar default for which Mr. Carter bore initial responsibility, but for which Mrs. Harvey was responsible for reason of her position as Mr. Carter's supervisor.

The receipt of the complaint on August 31, 1975 would appear to have been recorded in compliance with Section 14 of that Regulation 86. The transcription of Mrs. Dick's notes report the events at the hospital on that day constitute such a recording.

The other requirements of Section 14 of that Regulation 86 were not met. Mr. Carter did not, within twenty-one days of August 31, 1975, record any information as this investigation of the complaint. Nor did he record in that time a report determining that Kim was not in need of protection. Mrs. Harvey, as Mr. Carter's supervisor, should have ensured that those recordings were made.

The Society had determined early in September, 1975, if not on August 31, 1975 when Annals Popen and Jennifer Popen signed the form of non-ward agreement, that Kim was a child in need of protection. The validity of that determination was confirmed by order of Judge Nighswander on February 25, 1976.

Having made that determination in September, 1975, the Society was obliged to prepare and record a tentative plan for Kim's welfare and the steps taken to implement that plan. That recording should have been made within twenty-one days of August 31, 1975, it was not.

That too was initially Mr. Carter's responsibility, but Mrs. Harvey, as his supervisor, should have ensured that the appropriate plan was formulated and recorded.

Upon all of the testimony, the failure in this area is not one merely of lack of recording. There was no evidence that from August 31, 1975 to February 25, 1976 Mr. Carter or anyone else in the Society formulated any plan for Kim's welfare.

The only indication of any plan for Kim's welfare was Mrs. Harvey's testimony to the effect that she had decided that Kim would be returned to her parents. Such a basic and unadorned decision does not constitute a plan, but even that is not recorded in the files of the Society.

When Mr. Carter finally did record some information after being relieved of the case late in February, 1976, he wrote of "worker/client case relationships, case goals, etc." being "legally restricted" by Mr. Higgins. That acknowledges that no plan for Kim's welfare was formulated.

In the failure to prepare and record a plan for Kim's welfare, Mr. Carter, and thus Mrs. Harvey, were in breach of Section 15 of Regulation 86, Revised Regulations of Ontario, 1970, as well as in breach of Section 14 thereof.

Section 14 of that Regulation required that a tentative plan be prepared and recorded. Section 15 of that Regulation required the Society, within sixty days of Kim's admission to its care, to prepare and record a plan for her "care, treatment and progress." Thus by October 30, 1975 the Society, represented by Mr. Carter and by Mrs. Harvey as his supervisor, were obliged to have prepared and recorded that plan. That was not done.

Section 15 of that Regulation required every such plan to be reviewed and, if necessary, amended every three months thereafter. That should have occurred by January 30, 1976. There was no plan to be reviewed in January 1976; so there was no review.

That failure by Mr. Carter, and thus by Mrs. Harvey, to ensure the preparation, recording and review of tentative and definite plans at best supports the opinion expressed by the members of the Farina Committee that the staff of the Society were not knowledgeable about The Child Welfare Act.

Mrs. Harvey either was not aware of the provisions of Sections 14 and 15 of that Regulation 86, or she chose not to enforce or comply with them.

Mrs. Harvey was aware that Mr. Carter was preparing the application to be presented to the Court by the Society under The Child Welfare Act. It sought an Order declaring Kim to be a child in need of protection and placing her in the care of the Society.

Mrs. Harvey's duties included representation of the Society in the Court. She was to present the application prepared by Mr. Carter.

I am satisfied that the application was prepared in sufficient time to enable its initial presentation in Court on September 8, 1975. Mrs. Harvey testified that the hearing of the application was adjourned to October 29, 1975 because:

"A. Well, on September the 8th, we wouldn't have had enough time to get all the material together, all the witnesses subpoenaed, all the work that has to go in in the preparation of a case...but we had to get that case in Court."

Mrs. Harvey did not elaborate upon her statement that "we had to get that case in court." Doctor Turner testified that speedy application to Court is desirable even where a child is in the care of a children's aid society pursuant to the agreement of the child's parents. He testified long after Mrs. Harvey. In her testimony Mrs. Harvey did not give any reason to support her statement. She made no mention of any principle of practice or theory of social work which would require the Society "to get that case in court."

While Mrs. Harvey achieved her stated goal of getting the "case in court" quickly, it was really a useless gesture. The Society's application was initially presented in Court before Judge Nighswander on September 8, 1975. That was a formality. For a variety of reasons, the application was not substantially presented until February 25, 1976.

The delay of virtually six months arose, in large part because of the failure of Mr. Carter and of Mrs. Harvey, in her dual position as Mr. Carter's supervisor, and as the Society's representative in Court, to ensure that all necessary witnesses were present to testify.

The merely formal or token presentation of the Society's application to Court on September 8, 1975 does not meet the real substance of Dr. Turner's view that a speedy application to Court is desirable. He meant a speedy application and then a speedy

resolution of any points at issue so that all parties would know their respective position.

Mrs. Harvey testified that she was aware that, because Jennifer Popen and Annals Popen had signed a non-ward agreement placing Kim in the care of the Society for one month from August 31, 1975, the provisions of The Child Welfare Act requiring the presentation of such an application to Court within five days of Kim's detention in a place of safety would not be applicable. She testified:

"I didn't want any slip-ups and I went as fast as I could."

She said her first priority was to get Kim in the care of the Society and then to keep her there.

Those priorities were laudable. So too was the desire to proceed as quickly as possible.

Mrs. Harvey testified that she appreciated that investigation of the circumstances of the case and what she chose to call "groundwork" were as important as getting the case to court. I understood her expression "groundwork" to mean the provision of basic and initial service by the Society to Kim and her family.

In any event, on September 8, 1975, Mr. Lovatt and Mr. Carter advised His Honour Judge Nighswander that the Society would require a month to prepare for the hearing and that three doctors would be involved.

Mrs. Harvey relied upon Mr. Carter to prepare the application, but she retained responsibility for presenting it in Court.

Mrs. Harvey's testimony was that in June 1975, she had intended to assign the case to Mr. Carter and to instruct him to provide case work "on an intensive basis." It is reasonable to infer that in September, 1975 her intention would be that Mr. Carter provide case work on a basis at least as "intensive" as she had intended in June, 1975.

No criticism of the Society or any of its personnel should be expressed with reference to the

adjournment of the matter on September 8, 1975. Neither the Society nor Mr. Higgins on behalf of Jennifer Popen and Annals Popen had had time to prepare for the hearing. Both parties wanted an adjournment. Mr. Lovatt suggested a month's adjournment. The earliest time at which Judge Nighswander could hear the application was October 29, 1975. The Society then was seeking an order committing Kim to its care for six months.

From the outset in September, 1975, Mr. Carter and members of the Sarnia Police Force had difficulties interviewing Annals Popen and Jennifer Popen. One of Mr. Carter's responsibilities as a worker in the Family Services Department was to obtain information to enable him to prepare social histories of them and to furnish copies thereof to the Children's Services Department.

Mr. Carter testified that in September, 1975, he understood that a member of the Sarnia Police Force intended to charge Annals Popen and Jennifer Popen with an offence under the Criminal Code. He later learned the charge related to an offence under The Child Welfare Act.

He testified that from September 3, 1975 until February 21, 1976 he did not carry out case work as he might normally have done. He was hampered because of the two separate proceedings, the Society's application and the prosecution of Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act. He felt each was awaiting determination of the other. He substantially confined himself to being present when Kim was visited by her parents at the Society's offices.

Mr. Carter did speak with Annals Popen and Jennifer Popen, but only to the extent "permitted" by their solicitor, Mr. Higgins. Mr. Carter felt that was satisfactory while awaiting the outcome of their trial upon the charge under The Child Welfare Act. He did visit the Popen home on two occasions, once in January and once in February, 1976, shortly prior to dates set for hearing so that he could assess the conditions in the home. Each visit was with Mr. Higgins' express permission and, on the latter occasion, Mr. Higgins gave permission with the instruction to Mr. Carter that he not "quiz them."

Mr. Carter felt he was "legally restricted" and unable to follow routine or normal case work practices. He felt that Jennifer Popen was "hostile to answer questions." From September 24, 1975, she would not talk with him. She said that was on Mr. Higgins' advice.

Mrs. Harvey, responsible for supervision of Mr. Carter's performance of his duties and responsible for presentation of the Society application in Court, knew of the limitation upon the scope of his work which Mr. Carter accepted.

She should have been apprising herself of the state of preparation for the Court hearing. After September 8, 1975, the hearing was scheduled to be heard on October 29, 1975, then January 19, 1976 and then February 23, 1976. In that regard she must surely have asked Mr. Carter as to the progress of what he described as "routine or normal case work practices." If she did not she should have for without that information she could hardly feel that she was adequately prepared and able to present the application properly.

Her own testimony was that she had followed the case "fairly well" while Mr. Carter was responsible for it. An indication by what she meant by "fairly well" is contained in the following extract from her testimony upon the Inquiry:

"Q. Were you made aware by Mr. Carter of the problems that he had run with regard to seeing these parents?

A. Yes.

Q. Before the wardship hearing.

A. To some extent, yes.

Q. To what extent?

A. Oh, my door was always open unless I had an interview going on or something. People would come by and sit down for a few minutes and discuss things or stand in the door and say 'this is driving me nuts, what am I going to do?' and maybe we'd sit down

and talk about it. Now, I don't know how much detail Mr. Carter and I went into; he was always on the run. He was so busy that I would expect that our discussion of it was pretty limited.

Q. At any rate can I take it that you didn't discuss the problems that you were having in approaching the parents - that Mr. Carter was having in approaching the parents, with Mr. Lovatt?

A. No, I don't think so.

Q. Did you wonder how that problem might be resolved?

A. Yes, I surely did.

Q. And what conclusion did you reach?

A. That basically Mr. Higgins was a very reasonable man and that we could reach him and get him to agree to let us work with the family."

Mrs. Harvey did not give Mr. Carter any advice or instruction in his efforts to carry out "routine or normal case work practices" or to overcome Mr. Higgins' "instructions" requiring Mr. Carter to have no contact with Annals Popen and Jennifer Popen. Those "instructions" were withdrawn only when it suited Mr. Higgins' purposes and to complete the arrangement he had suggested to Mr. Lang.

Mrs. Harvey was fudging her response. I am unable to determine the extent of her discussions with Mr. Carter. I infer that there was no adequate conference within the Society in preparation for the hearing at any time. I am prepared to accept that there may have been some fleeting comment as Mr. Carter was "on the run," but there was no properly organized and structured meeting to discuss what witnesses might be called, what their testimony might be or how far that testimony might go towards satisfying Judge Nighswander that the Society's application should be granted.

A *fortiori*, I am satisfied that Mrs. Harvey gave Mr. Carter no advice or instruction in that regard. I am reinforced in that conclusion by Mr. Carter's testimony that on February 25, 1976 he was surprised to hear Mrs. Harvey request Judge Nighswander to grant only two months' wardship. The pre-hearing discussions between Mrs. Harvey and Mr. Carter were so scant that Mr. Carter was not aware of the basic submission Mrs. Harvey proposed to make.

Having read the transcript of the proceedings in Court on October 29, 1975, I am satisfied that the Society, as represented by Mrs. Harvey and Mr. Carter, was willing to proceed. Witnesses were present. I infer therefore that both Mrs. Harvey and Mr. Carter felt the evidence then available would be sufficient to persuade Judge Nighswander to grant the application. They did not vigorously oppose Mr. Higgin's request for a further adjournment.

Thus on October 29, 1975, if not considerably earlier, Mrs. Harvey knew or should have known of the limited investigation and other work that Mr. Carter had done.

The same comment applies even more forcefully to the appearance in Court on January 19, 1976.

There was no evidence to suggest that Mrs. Harvey instructed Mr. Carter that he was or might have been in error or that he was or might have been failing to perform his duties in the various ways which became apparent as he testified upon the Inquiry.

Mr. Carter gave unquestioning acceptance of the restrictions imposed by Mr. Higgins upon Mr. Carter's contact and discussion with Annals Popen and Jennifer Popen particularly from September 24, 1975 and again in January, 1976.

Mr. Carter's attitude was such that when he was asked the following questions in cross-examination upon the Inquiry he gave the following answers:

"Q. Isn't it fair to characterize your position as this, that as soon as you

learned that a lawyer who is known to be rather vigorous in their (sic) representation of his clients was involved in the case, you automatically adopted this courteous position that you've described of not creating a further disturbance with the law firm? Isn't that about it?

A. Correct.

Q. If we were to go back to your sentiments in the fall of 1975, I'm sure they would be that if you were to specifically try to interview the Popen about what exactly had happened you'd get into quite a furor with the law firm? That would have been your sentiments at that time, wouldn't it?

A. Yes.

Q. Yes, due to past experience?

A. Quite.

Q. Yes. And you're not an investigating law officer yourself whose mission is to establish guilt or innocence of persons of criminal charges. So, would it be fair to say that you would feel that was the responsibility of the police in any event to interview the alleged suspects and get confessions from them?

A. I took that to be their role."

It is not clear from Mr. Carter's evidence that he knew the legal niceties of the situation. He may very well have known that Mr. Higgins could not prevent him from asking questions, but in any event he chose not to ask any questions of Annals Popen and Jennifer Popen. He said that was because he was trying to establish a "rapport" with them.

Mrs. Harvey in her testimony acknowledged she made no effort to overcome the difficulty Mr. Carter encountered in trying to interview Annals Popen and Jennifer Popen even though she felt that the Society "really needed to work with this family."

In her testimony when asked if she had any complaint concerning Mr. Carter's work on Kim's case she replied:

"A. I wished he could have seen the Popens more frequently...
Not really a complaint but I wish that there had been more contact."

Mr. Carter did not follow routine or normal case work practices nor did Mrs. Harvey.

Mrs. Harvey in her testimony upon the Inquiry, when asked why, on February 25, 1976, she had formally sought an order placing Kim in the care of the Society for only two months rather than six months as previously mentioned engaged in the following exchange with counsel:

"Q. Did you feel it would be easier to convince Judge Nighswander you should get two months, rather than six months, is that a summary of your reasons for agreeing to a two month wardship?

A. No, I thought that it, that perhaps Mr. Higgins and Mr. Harvey wouldn't fight so hard for, to give us two months as they would for six and I wanted to get that wardship.

Q. Were they fighting hard?

A. Yes.

Q. Now, it hadn't been any fight up to this time, it had just been a series of adjournments...

A. Well, for one thing, you have had testimony from Mr. Carter that he was experiencing difficulty in interviewing the Popens. We were not able to get in there and do the work that we were supposed to be doing.

Q. Investigation of the Popen house?

A. Yes, and working with the parents and finding out more about them, which is what one does."

Mr. Carter believed, perhaps until February 9, 1976, that the charge against Annals Popen and Jennifer Popen was under the Criminal Code, not The Child Welfare Act. Thus he could not have been maintaining adequate liaison with the Sarnia Police Force.

He had no information as to the results of any investigation conducted by the Sarnia Police Force. He had no information as to any interview or communication by the Sarnia Police Force. Any information which the police investigation might have obtained should have been known to the Society. It might have been supportive of the Society's application and of assistance generally in the management of Kim's case. Mr. Carter had not even asked any police officer to advise him of the results of the police investigation.

He was not putting into the file an ongoing record of occurrences and information relevant to the case. Mrs. Harvey was aware that this was his usual procedure. She mentioned that as one of the reasons she was not concerned by the lack of recording immediately after June 17, 1975.

He did not secure the attendance of all necessary witnesses for the hearing of the Society's application on January 19, 1976. That resulted in an adjournment and delay which would not otherwise have been necessary.

Mrs. Harvey knew or should have known of all of these deficiencies in Mr. Carter's performance of his duties. She did nothing to correct them or everything that could and did flow from them.

Mrs. Harvey did not adequately perform her duties as Supervisor from September 2, 1975 until February 26, 1976. She did not instruct Mr. Carter as to the proper performance of his duties and she did not ensure that he followed her instructions.

As a result of those failures of performance by Mr. Carter, for which Mrs. Harvey as

Supervisor is responsible, and as a result of her own failure, in her role as Supervisor, including presentation of the application to Court, there was unnecessary delay in the Court and the presentation of the application was not complete.

Much was made from time to time during the Inquiry that Mrs. Harvey and other employees of the Society did not have ready access to the advice of a solicitor. It was suggested that their task was thus more difficult and they were at a disadvantage if counsel were retained to oppose them.

The absence of such convenience of legal advice was not truly a factor in Kim's case. On January 6, 1976, the Board of Directors of the Society acceded to a request from Mr. Lovatt and Mrs. Harvey which they said was based on the incidence of child abuse, that funds be made available to enable a solicitor to be retained in any proceeding if Mr. Lovatt felt it necessary or advisable.

Mrs. Harvey testified that from time to time she had spoken to Mr. Lovatt about the desirability of retaining a solicitor in various matters. She said she had understood from him that the Ministry of Community and Social Services had not approved an item for legal services contained in the 1975 budget submitted by the Society. She said she would have appreciated the assistance of a solicitor upon Kim's case, but she could not remember if she expressed that specific desire to Mr. Lovatt. She said it was a difficult case, but, in a sense of hopelessness in getting legal assistance she persevered alone.

At another point she repeated her uncertainty as to having spoken to Mr. Lovatt to seek permission to retain a solicitor, but the emphasis was changed somewhat to show that she thought she had spoken to him, but had told him she could manage.

She acknowledged that on at least two earlier occasions the Society had retained solicitors in connection with difficult cases.

I am satisfied that the Society would have retained a solicitor to assist Mrs. Harvey with Kim's case if she had asked for such assistance. That

would have been so in 1975. It would have been so in 1976 after the action of the Board of Directors of the Society on January 6, 1976 to provide funds for legal services if required by Mr. Lovatt.

Mrs. Harvey did not ask Mr. Lovatt to retain a solicitor to assist her with Kim's case.

Mrs. Harvey took some satisfaction in saying that, although it was a serious and difficult case with "road blocks...thrown up" by Mr. Higgins, "The only comment I have to make is that I did win."

She meant by that comment to imply that she successfully presented the Society's application. Her smug satisfaction is not merited when one examines the history and facts of the case as shown upon the Inquiry.

If the mere granting of the application by Judge Nighswander constituted winning, then Mrs. Harvey and the Society did win.

But the winning came months later than it should have. The testimony of the skilled and experienced social workers who testified upon the Inquiry was that expeditious completion of proceedings such as were taken by the Society is important. The child whose life is to be affected by the result is entitled to that. Here by reason of Mrs. Harvey's failure to ensure that Mr. Carter properly performed his duties the completion of the matter was unnecessarily delayed by more than five weeks from January 19 to February 25, 1976.

Mrs. Harvey shares some responsibility for the earlier delay from October 29, 1975 to January 19, 1976. That came about at Mr. Higgins' request. He based his request on the charge laid by the Sarnia Police Force under The Child Welfare Act which, by error, was at that time on the list of cases for trial in the Provincial Court (Criminal Division) of the County of Lambton rather than the Court.

Mrs. Harvey did not oppose his request. She did not draw to the attention of Judge Nighswander or Mr. Higgins that such a charge could be heard only by a provincial judge sitting in provincial court (family division). Had Mrs. Harvey

mentioned that provision in The Child Welfare Act it may not have been necessary for Judge Nighswander to adjourn the matter for such a lengthy time to await the outcome of the trial in Provincial Court (Criminal Division) which, from Mr. Higgins' submissions in support of his request for an adjournment, could reasonably be expected to be completed in December.

Perhaps Mrs. Harvey was not aware of that provision of The Child Welfare Act, but she should have been. A qualified social worker, particularly one in a supervisory position, should be aware, at least in a general sense, of the provisions of The Child Welfare Act relating to the court in which various matters are to be heard. That is all the more so in Mrs. Harvey's case for she was responsible for representation of the Society in Court upon various matters under that statute.

The same sort of comment applies to Mrs. Harvey's failure to mention the provisions of section 40 (3) of The Child Welfare Act empowering the judge conducting a trial of a charge alleging an offence under section 40(1) or section 40(2) under that Act to hold a hearing and proceed as if the child involved in the charge had been brought before the Court as a child apparently in need of protection.

My criticism of Mrs. Harvey in this area may appear to be harsh. Others were initially unaware of the particular statutory provision as to the jurisdiction of the Court. But Mrs. Harvey was the Society's representative in court matters. It was she who, at about that same time in the fall of 1975, told Mrs. Farina that the Society could gain nothing from attending a seminar for court workers sponsored by the Ontario Association of Children's Aid Societies.

I am aware that even before Mr. Higgins mentioned that the trial in Provincial Court (Criminal Division) might be held in December 1975, Judge Nighswander had mentioned January 19, 1976 as an open date for him in Provincial Court (Family Division). At the same time he said "It's a terribly long time." So I am inclined to believe that had he been reminded of the statutory provisions he might have been able to arrange an earlier date for a trial and hearing of the two matters, separately or as one matter.

While Mrs. Harvey was prepared to persevere without any advice or assistance from a solicitor, it is reasonable to suppose that a solicitor preparing for a trial or hearing would have been aware of the statutory provisions and would have brought them to Judge Nighswander's attention.

Kim's interests were not well served by the Society and Mrs. Harvey in the preparation and presentation of the Society's application.

The evidence presented by Mrs. Harvey upon the hearing was incomplete. In brief testimony Police Constable Wyville said that he had seen Kim in hospital on August 31, 1975 and had noticed she had bruises on her arms, ankle and cheek and a cut lip. He had then turned the matter over to Mrs. Dick. Only in cross-examination and in response to questions by Judge Nighswander did Police Constable Wyville mention that Jennifer Popen had given different stories as to how the injuries were caused.

On consent, the statement of facts read in upon Annals Popen's plea to the charge under section 40 of The Child Welfare Act on February 23, 1976, was accepted as part of the evidence.

Two photographs of Kim in hospital taken by a police officer on August 31, 1975 were introduced to illustrate her injuries.

The Director of Medical Records of the hospital testified as to Kim's admissions to hospital from March 22 to April 3, 1975 for a fracture of the left humerus, as an outpatient on April 12, 1975 for upper respiratory infection, from April 28 to May 2, 1975 for bronchiolitis and from August 31 to September 5, 1975 for "battered child syndrome, multiple bruises, fractured humerus."

Dr. Singh testified as to his examination of Kim on March 25, 1975. He said the explanation for the injury did not satisfy him that such an injury could be caused in the way stated, that is, that the arm was broken while Jennifer Popen was changing Kim's clothes. He had requested a full investigation of the background of the parents.

Upon cross-examination Dr. Singh testified as to having seen Kim on August 31, 1975. Jennifer Popen had told him that Kim fell from her crib while climbing out. That would be an unusual feat for a child of Kim's age. She could not have climbed out. The bruises on Kim's ankle were unusual "except if you grab tight or squeeze it." If the side of the crib was down she could have fallen out, but then he would have expected an injury to her head and there was none.

In response to Judge Nighswander he said the injuries were "recent" and appeared to have occurred within three to five days prior to August 31, 1975.

Mrs. Hewitt testified as to Kim's admissions to hospital on March 22, April 28 and August 31, 1975. She had been involved in Kim's case on all three occasions. She saw nothing extraordinary in the way Jennifer Popen handled Kim on the first two occasions. She had not seen Jennifer Popen handle Kim on the third admission and Kim was well nourished. Her injuries on August 31, 1975 did not appear to have been caused by falls. Jennifer Popen had said Kim fell from the crib on August 30 and again on August 31, 1975. The bruising of the elbow appeared to be caused by the pressure of a hand, fingers and thumb.

Mrs. Dick testified as to the non-ward agreement signed by Annals Popen and Jennifer Popen on August 31, 1975. She had been called to the hospital because Jennifer Popen had wanted to remove Kim from hospital against the advice and wishes of medical personnel.

Mrs. Kirby testified as to the Society's care of Kim following her release from hospital on September 5, 1975. She described Kim's actions and reactions to attention. Kim rejected it and had restless nights. On the first visit of Kim with her parents Mrs. Hewitt restrained Jennifer Popen from grabbing or holding Kim by her injured elbow. Jennifer Popen and Annals Popen visited Kim regularly. The visits went well. Each visit was only one-half hour.

That was the extent of the testimony given by witnesses called by Mrs. Harvey. What I regard as some of the most helpful testimony was elicited in cross-examination or by questions put by Judge Nighswander. Mrs. Harvey did not present the case well. She was not prepared.

No witness was called on behalf of Annals Popen and Jennifer Popen. Judge Nighswander of his own volition called Jennifer Popen. He obtained from her some responses as to her age, schooling, residence, religion and marriage and as to Kim and her injuries. He asked her how Kim's arm was broken on March 22, 1975. It was here that she gave the confusing series of answers I have already mentioned. Those responses, with some intervening questions were as follows:

"Q. Yes. How did her arm get broken on the 22nd of March when the child was admitted?

A. Well, that was an accident when she had the broken arm the first time.

Q. How did that accident happen?

A. Well, I had the crib down and I had her little sitter, and she was very sick.

Q. I don't want to mix you up. I'm thinking now of the first time. The baby is only two months old the first time.

A. Yeah, she fall that time.

Q. Where did she fall from?

A. Had her out of her crib in her little sitter.

Q. She was in her sitter in the crib?

A. Yeah. I had her in a sitter.

Q. And she fell out onto the floor?

A. Yeah."

Judge Nighswander then generally described the testimony of other witnesses as to the nature and location of the bruises. After that description questions by Judge Nighswander and answers by Jennifer Popen recorded in the transcript of those proceedings as follows:

"Q. And the second time--the 31st of August --how did those injuries take place?...Did you see those happen?

A. No.

Q. How did you discover them? (sic)

A. A day before I took her to the hospital.

Q. So that would be on the 30...31st of August?

A. Yeah, and I took her on the 31st.

Q. But how did you find them?

A. I saw them on her and when I am dressing her she cries, her arm, so I bring her straight...

Q. Did you find out how those bruises got there?

A. Yeah.

Q. How did they get there?

A. Well, some of them were, like, my husband was drinking, and...

Q. Is this what he told you?

A. Well, no.

Q. Or did you see?

A. Well, no, yes.

Q. Did you see him doing something that caused the bruises?

A. Yes, some of them.

Q. What was he doing?

A. He was drinking and he was holding the baby, yeah, and he was holding her and hurt her.

Q. Were you aware he was hurting her when he held her?

A. No.

Q. Didn't the baby make any...

A. No.

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Q. How about the break in the arm the 31st of August?

A. Well, on the 31st of August I was washing clothes and I pulled the crib up, but it wasn't locked, you know. The part of the crib didn't stay up very well, so I was going to tie it up, and she was standing up like I said to the cop. She stand up and my cousin was there. I didn't see when she fall, but I find her underneath the crib.

Q. Then what did you do?

A. That's when I watched her for a little while and took her to the hospital.

Q. When was it that you saw your husband grabbing her?

A. On the 30...

Q. The same day or the day before?

A. No, the day before.

Q. And how about the knees? How did those bruises happen?

A. I never seen them.

Q. You don't know how it happened?

A. No, not the bruises on the knees."

Mrs. Harvey did not cross-examine Jennifer Popen nor did she make any submissions in support of the application.

In view of the nature of Jennifer Popen's responses to questions put by Judge Nighswander, particularly in the light of Mrs. Harvey's own often expressed opinion or suspicion that Jennifer Popen, not Annals Popen, was responsible for Kim's injuries, it is incredible that Mrs. Harvey did not cross-examine Jennifer Popen. Jennifer Popen was trying to excuse herself from any responsibility for any injury to Kim and to place on Annals Popen responsibility for any injury which Jennifer Popen had not sought to explain away as having been caused by accident.

Mrs. Harvey made no effort to apprise Judge Nighswander of the opinion or suspicion of herself and others as to Jennifer Popen's involvement with the injuries to Kim.

Nor did she make any effort to inform Judge Nighswander of other relevant material which was available from the Society's files. Included therein was a ten page transcript of a conversation between Jennifer Popen and Dr. Singh with a nurse, Mrs. K. Mitchell, present and participating. It related to the injuries discovered on August 31, 1975 and showed Jennifer Popen to have said:

"I didn't tell you this part, she did fall out of the crib...meanwhile his [Annals Popen's] temper broke and he picked up a shoe, I had the baby [Kim] in my hands, he couldn't even see what he was doing, he was so drunk and he threw the shoes...I couldn't catch the shoe and it hit the baby and then he threw the other one and hit her again. So I want to tell you guys this part I didn't told you but she did fall and hit her hand same hand she hit before."

It also contained some comment on Kim's injury in March, 1975 which did not appear to be consistent with her replies to Judge Nighswander on February 25, 1976.

Then too it contained her statement that on August 31, 1975 at the hospital she had not wanted to remove Kim from hospital, but "just want[ed] to scare them [the nurses]." In it she referred to her niece beating Kim's legs with a heavy comb and she spoke of relatives in Sarnia saying "they hate kids and they beat them up all of the time." None of that was explored before Judge Nighswander.

Mrs. Harvey did not advise Judge Nighswander that X-rays taken in September, 1975 revealed rib fractures which had occurred a month earlier.

Jennifer Popen's testimony stood unchallenged. Dr. Singh's testimony upon examination in chief by Mrs. Harvey is recorded on less than one page of transcript. His cross-examination and responses to Judge Nighswander are recorded on about two pages and his re-examination by Mrs. Harvey is on about one-quarter of a page. The lines in those pages are single-spaced.

Upon the Inquiry, Dr. Singh's testimony is recorded on about fifty pages, double-spaced. His examination in chief is comprised of almost twenty-four pages. He was cross-examined by only one counsel. That comprised almost twenty-six pages. The examination-in-chief and the cross-examination were thorough, but were not in any way inflated or repetitive.

I appreciate that a comparison of examinations of witnesses based solely on the length is not really valid. But the examinations upon the hearing were not short because they were well organized and to the point and complete. They were not. The examinations upon the Inquiry were not unduly long. There were complete and directed well to the points of interest.

In examination in chief upon the Inquiry, Dr. Singh gave a complete review of his examination of Kim in March, 1975 and in August, 1975 and the

various documents on which were recorded his findings, observations and other particulars of information given by Jennifer Popen upon those occasions and particularly the stories as to the ways in which Kim had been injured and which he said were not compatible with the injuries. He set forth his own suspicion of the presence of the battered child syndrome in March, 1975 and his concern then for Kim's safety and his desire that investigation be undertaken by the hospital social worker, Mr. Khattab. He mentioned the discovery, by X-ray in September, 1975, that Kim had suffered fractured ribs about one month earlier. He described the force he felt would have been required to cause each injury. He used terms such as "severe force," "strong violence or strong force", and "falling from a great height - more than three to four feet." The bruises on the ankles could be caused "by grasping tightly... a tremendous amount of pressure on the ankles."

Upon the Inquiry, Dr. Singh testified that he recorded the conversation he had with Jennifer Popen in September, 1975. He produced a transcript of it. He recorded the conversation because Jennifer Popen had earlier changed her explanation for previous injury and he wanted to establish a consistency in the pattern. He said that in cases of child abuse there is a great deal of inconsistency. He said that in March, 1975 he suspected that Kim had been abused; in September, 1975 "we were pretty sure it was child abuse: there was no question in our mind and we just wanted documentation." He had sent a copy of his report to the Society.

Upon the Inquiry, Dr. Singh said that in September, 1975 Kim suffered from slight iron deficiency anemia. He said this was probably because she received milk without solid food. That was in the pattern of cases of neglect or abuse of children. It indicated that the mother simply gave the child the bottle rather than spending more time and effort to give solid food.

I have set out this comparison of the testimony given before Judge Nighswander and that given upon the Inquiry to demonstrate how much more evidence could have been presented before Judge Nighswander. The two proceedings were so different

as almost to defy comparison. One might more properly speak of contrast rather than comparison.

Mrs. Harvey did not present a full and complete case to Judge Nighswander. She was content to present enough evidence to persuade the learned Judge to grant the application. Judge Nighswander was prescient when he declined Mrs. Harvey's submission, concurred in by counsel for Jennifer Popen and Annals Popen, that the Society be granted custody of Kim for only two months. He decided that it was an inappropriate submission, saying:

"I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child."

Mrs. Harvey should have had a corresponding concern for Kim's safety. Upon the Inquiry she testified that the request for wardship for a period of only two months was a tactic to overcome the resistance of Annals Popen, Jennifer Popen and Mr. Higgins, but yet she denied any prior discussion along that line with Mr. Higgins or his office.

The comparison of the testimony before Judge Nighswander with that upon the Inquiry reinforced my belief that Judge Nighswander was misled by the paucity of evidence given to him. His reason for judgement disclose that he was led to regard Jennifer Popen as a loving and caring wife and mother struggling to hold her family together despite the brutal drunken behaviour of Annals Popen.

Mrs. Harvey was responsible for that and she did nothing to prevent it from happening.

Apart from the above failures by Mrs. Harvey to fulfill her obligations there were two incidents in February, 1976 which merit comment. They illustrate how Mrs. Harvey managed Kim's case and her general attitude towards others who might suggest to her that her decisions, made without prior consultation with others, might be in error.

On February 19, 1976, Police Constable Wyville and Police Constable Charlton of the Sarnia Police Force visited the Society's offices. Police

Constable Wyville did not state the purpose of the visit. He was uncertain as to its date. At one point in his testimony he felt it was only shortly before Kim's return to her family home on May 27, 1976, but later acknowledged it might have been February 19, 1976. On the testimony of others I am satisfied that it was on February 19, 1976.

On February 19, 1976, Police Constable Wyville and Police Constable Charlton spoke with Mr. Carter and Mrs. Kirby. Mr. Carter informed the police officers that Kim might be returned to her parents. As a result of their mutual concern over that prospect Mrs. Kirby, Mr. Carter and the police officers went to Mrs. Harvey's office to discuss the matter with her.

All four of her visitors expressed in no uncertain terms the concern they felt. Police Constable Wyville testified that he told Mrs. Harvey "If you give the baby [Kim] back it will be in the grave within three months."

The four who visited her office recalled in some way Police Constable Wyville's comment. Their recollections of the words he used did not all accord one with the others, but were sufficiently similar to satisfy me that something of that sort was said. I am satisfied that while the others may not have expressed themselves as dramatically as Police Constable Wyville did, their presence and their words and attitudes expressed their great concern for Kim's safety and their objection to her being returned to her parents' home.

The four who visited Mrs. Harvey all testified that, notwithstanding their objection, Mrs. Harvey insisted and persisted in her decision that Kim was to be returned to her parents.

Mrs. Kirby testified that when Mrs. Harvey spoke of returning Kim she spoke as if she might do so even before the matter came on for hearing in Court. Mrs. Kirby said she voiced her objection to any such possibility.

Unlike the others, Mrs. Harvey could not remember that remark by Police Constable Wyville. She did not feel that Mrs. Kirby had voiced objection

to the concept. Her version of the discussion was that she might have told the others that Kim would eventually be returned to her parents' home.

Mrs. Harvey had accepted as a starting point for the management of Kim's case the hypothesis that, where it is at all possible, it is better for a child to be in his or her own home rather than in a foster home. She said that she did not then have any plans to return Kim to her home "at that time," but she did have plans to return Kim "eventually." Her view was that the others were concerned over the possibility of Kim being returned at that time and had not voiced any objection to the possibility of her return at any later time. She in effect was saying their concern was premature as it was not her intention to return Kim on February 19, 1976, but she did intend to return her at some later undefined date.

Mrs. Harvey testified that she did not know when she had decided that Kim was to be returned to her home. She said "apparently at some point I made the decision that it would be worthwhile trying it." She said she probably made that decision before February 25, 1976 when the Society's application was heard in Court.

That being so and bearing in mind that on February 25, 1976, Mrs. Harvey sought an order placing Kim in the care of the Society for only two months it would seem that Mrs. Harvey was merely engaged in an exercise in semantics when she denied having on February 19, 1976 any plan to return Kim "at that time" and averred having then a plan only to return her "eventually." In the light of events Mrs. Harvey's use of the word "eventually" seems inappropriate.

Leaving aside the question as to when Mrs. Harvey decided "it would be worthwhile trying it," there remains the larger question as to the appropriateness of the decision and the manner in which it was reached. Mrs. Harvey gave no appropriate or satisfactory explanation for her decision. It was made against the advice of others in the Society and outside of it. It was a decision which was not acceptable to any of the expert witnesses who testified upon the Inquiry. Nothing in the factual

circumstances justified Mrs. Harvey's decision that Kim would be returned.

In February, 1976 when she made that decision Mrs. Harvey knew virtually nothing about Kim's parents. She knew that Kim had been seriously injured on at least three occasions and that there were suspicions or suggestions of other incidents of injury. She knew that none of those incidents of injury had been investigated so as to indicate who had caused the injuries or why he, she or they had caused them. She knew that, despite her own acknowledgment of the correctness of Mrs. Saul's assessment that the case would require long involvement of the Society with the Popen family, her own belief that the Society "really needed to work with this family." Mr. Carter had been unable to carry out "routine or normal case work practices." She had had only passing contact with Annals Popen and Jennifer Popen in the courtroom or corridors of the courthouse on days fixed for trial or hearing. She knew Mr. Carter had not had much more contact with them.

When it was suggested to her that she had made the decision unilaterally, Mrs. Harvey responded as follows:

"It would have been on the basis of reports and so on from workers and what not. I didn't go into the home."

That was a deliberately vague and misleading response. Her use of the expressions "and so on" and "and what not" are meaningless.

As to reports from workers, she had Mrs. Saul's report. It was admittedly preliminary and exploratory in nature and did not provide any basis to support a decision to return Kim to her parents.

Mrs. Dick's report related to events of August 31, 1975. It gave no basis of support for such a decision.

Mr. Carter had not placed any written record upon the file. He had spoken with Mrs. Harvey, but in haste. He had not carried out even "routine or normal case work practices." Whatever he

might have told Mrs. Harvey would not provide any basis of support for such a decision.

Even if Mrs. Harvey had misunderstood Mr. Carter's position his appearance with Mrs. Kirby and the police officers in her office on February 19, 1976 should have shown Mrs. Harvey that she had misunderstood him and there was nothing in his records to support any decision to return Kim and he in fact opposed it.

Mrs. Kirby's recordings in the file of the Children's Services Department make no mention of the possibility of Kim's return to her parents. Mrs. Kirby's attendance in her office on February 19, 1976 should have shown Mrs. Harvey that Mrs. Kirby did not favour such a decision.

When asked if there was anything positive in the reports made to her on the Society's files up to February 25, 1976, Mrs. Harvey responded simply "Not particularly," but went on to say that a decision to work towards a child's return was not irreversible.

While Mrs. Harvey in her testimony used terms such as "we were working, we were going to try to get the child back home" she used the pronoun in the editorial, or almost the royal sense. Any decision to return Kim was made by Mrs. Harvey alone. She had no meaningful consultation with others, within or without the Society, who had been involved in the case. She made her decision over the strongly expressed objection of the police officers and Mrs. Kirby and Mr. Carter, the two workers in the employ of the Society who, to that time, had had responsibility for the management of the case. The following question put to Mrs. Harvey and her reply are revealing. She was asked:

"Did anybody other than yourself make the decision to return Kim Anne Popen to her home or to work towards that?"

She replied:

"I don't believe so."

That was not a forthright answer. Nowhere in her testimony or that of anyone else was there any

suggestion that anyone else participated in the decision.

On the testimony of the skilled and experienced social workers who testified upon the Inquiry, I find that that style or method of making decisions of such magnitude is unsatisfactory and unacceptable.

I appreciate that one person in authority may have to make any such decision and it may not be acceptable to others. But the accepted, conventional and satisfactory method of arriving at the decision is to consult with others involved in the case or having particular skills or experience which will be helpful. Then the person charged with the responsibility should properly weigh and evaluate the various opinions expressed by the participants in the consultation. It should not be merely a facade of consultation followed by an unreasoned decision against the weight of opinion expressed during the consultation. It should not be merely the reaffirmation of a decision made by the person in the position of authority and maintained by that person against the weight of such opinion.

Mrs. Harvey made the decision without consultation and persisted in it even in the face of objection from others who had been involved. Mrs. Harvey did not approach Mrs. Lois Archer, Supervisor of the Children's Services Department or Mr. Lovatt even after February 19, 1976 when the correctness of her decision was questioned. She was satisfied that she was right and did not feel she needed to obtain any other opinion.

This was an example of Mrs. Harvey's dominating personality and behaviour. It was an imposition of her will, without reasonable basis in fact or theory, upon Mr. Carter and Mrs. Kirby and the police officers. She abused the power of her office as Supervisor of the Family Services Department.

That imposition of her will upon others continued into May, 1976 when Kim was returned. The organization of the Society which gave the Family Services Department a position of precedence or dominance over the Children's Services Department in

cases in which both were involved, as here, prevented Mrs. Archer and Mrs. Kirby from effectively opposing Mrs. Harvey. Mrs. Archer did not resist in any way and Mrs. Kirby did not resist after February 19, 1976. I do not suggest that Mrs. Archer and Mrs. Kirby were weak. Past incidents showed them that the organization of the Society made Mrs. Harvey pre-eminent and made resistance to her futile.

Mrs. Harvey was able to impose her will upon the police officers not because of any weakness on their part, but because of the practicalities of the situation. Kim was in the care of the Society. In matters of child welfare the children's aid society is accepted as being the dominant social agency both in law and in fact. While the police officers technically were empowered to apprehend Kim if there was basis therefor under the provisions of The Child Welfare Act I cannot see police officers in a practical situation apprehending a child as being a child apparently in need of protection if the local children's aid society insists the child is not in need of protection. It might very well occur in a most flagrant case. In calm retrospect Kim's might be seen to be such a case. But one can understand the deference shown by the police officers to Mrs. Harvey.

Mrs. Harvey in one of her responses sought to justify her decision to return Kim to her parents. She spoke of the good that might come to the community if, from Kim's return home, her parents were to learn how to raise children and thus care for other children who might be born to Jennifer Popen, a still young woman. She spoke of benefiting those as yet unborn children, but at the same time not risking Kim, the first child.

When asked if it did not seem to be an inappropriate case for the return of the first-born, she replied "...I thought we could try it." Her use of pronouns make it clear. She thought the Society could try it. My earlier reference to lack of reason or justification for Kim's return is applicable. Mrs. Harvey has not shown any basis for her decision. Of all who testified upon the Inquiry only she tried to defend it. Her attempt was futile.

The second incident to which I referred was the decision to relieve Mr. Carter of responsibility for Kim's case and to assign that responsibility to Mrs. Lo. It too was an instance of a decision being made by Mrs. Harvey impulsively, without appropriate consideration of the opinions of others and without adequate information or reason to support the decision. That decision was followed by equally impulsive action to implement it.

On all of the evidence of the experienced and skilled social workers who testified upon the Inquiry that decision to transfer the case to Mrs. Lo was an indefensible error and contrary to good practice. They saw no justification for the decision.

It was preceded by another instance of decision and action by Mrs. Harvey without consultation and without proper basis therefor. That was Mrs. Harvey's decision, announced in open Court on February 25, 1976 to Mr. Carter's surprise, to ask for an order placing Kim in the care of the Society for only two months. Until then all discussion had been directed towards an order of six months wardship. Although he had been in charge of the case for almost six months and had prepared the Society's application for presentation in Court, he had not been advised of Mrs. Harvey's decision and had not been consulted about it in any way. There was no testimony to indicate Mrs. Harvey had discussed the subject matter of that decision with anyone.

Then immediately after conclusion of the hearing on February 25, 1976, Mrs. Harvey announced to Mr. Carter that he would no longer be responsible for management of Kim's case and that Mrs. Lo would be assigned to the case.

In her testimony Mrs. Harvey mentioned several reasons which she relied upon as justifying her decision.

In support of her decision to remove Mr. Carter from the case she spoke of his heavy case load and of her desire that Kim's case receive a great deal of service. She said that because he had been involved in some cases for long periods of time it would have been inappropriate to relieve him of other

cases so that he might devote the necessary time to Kim's case.

In support of her decision to assign the case to Mrs. Lo she spoke of Mrs. Lo as being closer in age to Jennifer Popen, as having a confident manner, as being a good student prepared to read to learn her craft, and as being one who had a significant comprehension of events. She said Mrs. Lo was well-liked and respected by others in the Society.

Mrs. Harvey acknowledged that Mr. Carter was a good social worker with experience in cases of child abuse whereas Mrs. Lo had little experience or training in social work in general and none whatsoever in cases involving child abuse.

She acknowledged that Mr. Carter had good relations with community resources, including police and medical people. Mrs. Lo had not developed those relationships.

In testifying upon the Inquiry, Mrs. Harvey defended her assignment of the case to Mrs. Lo. After reciting her assessment of Mrs. Lo's attributes, which I have somewhat condensed above, she went on to say:

"..., she was under a period of intensively close supervision, she had had the advantage of being (sic) the experienced worker in the same room for a month and picking up tips on doing this. She had weekly, lengthy, weekly, supervision with me in which we discussed agency and case matters, social work, concepts, techniques of working, and she had team meetings once a week. Her training was really quite intensive."

That answer certainly gilds the lily. I have commented on it in an earlier portion of the Report. I share the view of the members of the Farina Committee as set forth in the first version of their report, signed by all three members. That view is as follows:

"..., we question the method used in transferring this case and note that transfer

should be for the benefit of the client and keeping in mind, in this case, the planning and protection of the child, Kim. In considering the method used in transfer we must question the supervisor's use of her authority, as well as her professional practice.

Rationale for transfer is also questionable. Any case as obviously serious as this one should never be assigned to an inexperienced worker with no social work education or experience and we note that Mrs. L[o] had been with the society less than three months. It is recommended practice in cases of child abuse that these cases be assigned to the most experienced, well qualified personnel. Assignment of this case to a person with virtually no protective service experience and no social work qualifications was a gross error in judgement on the part of the supervisor."

What Mrs. Harvey presented as her reasons for transferring the case from Mr. Carter to Mrs. Lo are not valid.

Without exception those with social work skills and experience who testified upon the Inquiry said that cases of child abuse are among the most serious and most difficult dealt with by children's aid societies. They require workers who have had practical experience to support their academic knowledge. The symptoms of child abuse are often difficult to recognize. They are subtle. Management of such cases often requires the involvement of a number of persons possessing a variety of knowledge and skill. Such knowledge and skill will not necessarily be found within one community or social agency.

Mr. Carter was an experienced social worker with the Society. He had experience with other cases of child abuse. He had developed working arrangements with others outside of the Society whose support and assistance, either as individuals or, perhaps more importantly, as representatives of other social or community institutions or organizations, were available to him if needed.

Mrs. Lo, with all the intelligence and abilities she may have possessed and all the good intentions she may have had, did not have the knowledge and experience and community connections which were needed to manage Kim's case.

Mrs. Harvey's decision to assign the case to Mrs. Lo was one of the gravest errors she made in relation to Kim. I do not believe that the real reason for that decision was given in testimony. The reasons stated by Mrs. Harvey do not stand up to scrutiny. She should know it.

The manner in which that decision was reached was not satisfactory. It was contrary to what was presented as the practice of the Society. That practice was to have a meeting of the team of workers to which the workers involved with the case belonged. The supervisor would attend. The case would be discussed by everyone present, even those who had not been directly involved in the case. The discussion would seek to determine whether, having regard to the specific case and to other cases as well, it was necessary or advisable to transfer the case from the worker to whom it had been assigned. Then, if that was decided in the affirmative, the discussion would seek to ascertain to what other member of the team the case should be assigned.

In Kim's case there was no such meeting. There was no such discussion. There was no such determination.

Mrs. Harvey made the decision in isolation. Even apart from her failure to meet with the team of workers as she should have she did not discuss the possibility of transfer even with Mr. Carter. She did not have any personal knowledge of the particulars of the case. Mr. Carter had written nothing in the file. Even on her own testimony her dealings with Mr. Carter with reference to the case were hurried and she could not recall that they related to the details of the case.

From the scanty presentation of the Society's application in Court, I am satisfied that Mrs. Harvey knew very little about Kim's case as an individual case. She had decided to apply to it the general philosophy which she said then existed in the

Society. She had determined that the "working hypothesis" for Kim's case was that the child should be returned to her home. That decision was not based on consideration or knowledge of the particular circumstances of Kim and her parents.

The testimony in this area is sufficient to permit me to draw from it an inference that there was a connection between the confrontation of Mr. Carter and others with Mrs. Harvey on February 19, 1976 and Mrs. Harvey's two decisions, announced to Mr. Carter six days later, that the Society sought only two months' wardship and that he would no longer be responsible for the case.

It is interesting also to note Mrs. Lo's testimony in this area. She learned from Mrs. Kirby that the case might be assigned to her. She felt that was in February before the wardship hearing. Thus again Mrs. Harvey made the decision to transfer the case to Mrs. Lo without any prior discussion of it with Mrs. Lo.

Mrs. Harvey had made her decision without any discussion with the two workers directly affected by it.

I am not to be taken as suggesting that Mrs. Harvey was not entitled, as Supervisor, to make the decision. She was so entitled. But the practice of the Society was to have a team meeting to discuss the matter.

On all of the evidence upon the Inquiry, I am satisfied that that is a normal and acceptable practice in relation to proposed transfers of cases.

As I have written earlier, there was no such meeting and there was no such discussion.

Assuming that Mrs. Harvey in any such meeting or discussion would have supported the proposed transfer for the reasons she gave upon the Inquiry, those reasons would then have been shown to be as specious and invalid as I have found them to be.

Having made the decision to transfer the case, Mrs. Harvey again failed to follow the more

usual practice of the Society. She did not arrange a meeting with Mrs. Lo and Mr. Carter to ensure for the orderly transfer of the case. She did not arrange for Mrs. Lo and Mr. Carter to visit the Popen home together to inform Annals Popen and Jennifer Popen of the transfer and what was involved in it.

From February 25, 1976, Mrs. Harvey did not fully and properly perform her duties as Supervisor of Mrs. Lo's activities.

Mrs. Harvey made no notes of the reasons for judgement given by Judge Nighswander and she did not arrange for the Children's Aid Society to receive a transcript of the proceedings in Court on February 23 and 24 and March 29, 1976. She did arrange for Mrs. Lo to be present in Court when Annals Popen was sentenced on March 29, 1976.

She did not ensure that the Society received a copy of the pre-sentence report prepared by Mr. Brouwer and presented in Court on March 29, 1976. She did not in any way seek to ensure that any of the concerns voiced in the pre-sentence report and its accompanying documents were met.

Mrs. Harvey did not adequately instruct Mrs. Lo as to her duties and obligations and powers. After Kim was returned to her parents on May 27, 1976, Mrs. Harvey did not instruct Mrs. Lo to undress Kim on occasion to examine her outward appearance. She did not instruct Mrs. Lo to arrange for Kim to be examined by a medical doctor.

Mrs. Harvey did not adequately instruct Mrs. Lo as to the matters which should be of concern to her. She did not inform her that some things might be regarded as danger signals, signals that Kim might be in danger. Some such things were the variety of inconsistent stories told by Jennifer Popen with reference to how Kim was injured, stories that were not compatible with the nature and extent of the injuries. Another was the personal history which Jennifer Popen had given and in which she claimed to have been abused in different ways as a child.

The meeting of May 6, 1976, in which it was decided to return Kim to her home before the birth of

Jennifer Popen's next child, which was anticipated to occur in July, would, in other circumstances, have been an appropriate meeting. But in Kim's case it was of limited value because it was circumscribed by Mrs. Harvey's earlier decision that Kim would be returned home. All that was left to be decided in May was whether the return would be effected before or after that birth.

At that meeting no one questioned Mrs. Harvey's decision that Kim would be returned. The police officers who questioned it in February were not at the meeting. Mr. Carter was not there.

Mrs. Kirby was there, but she felt she had adequately and fully expressed her objections in February. Like others who testified, she understood that the organization of the Society gave to the Family Service Department the authority and responsibility to make such a decision. She was not a member of that Department.

Mrs. Archer was there. She was Mrs. Kirby's supervisor. She too understood that the duty and the power was on and in the Family Services Department and its Supervisor, Mrs. Harvey.

Mrs. Lo was there. In all of the circumstances of her own lack of knowledge, skill and experience in child abuse cases she could not have been expected to question the basic decision made by Mrs. Harvey. She did not.

That effectively destroyed the validity of that meeting. It was not a meeting which was meaningful and which would meet any acceptable standard of a free exchange of information and opinions which the witnesses upon the Inquiry testified was required.

Subject to that limitation the meeting determined that Kim's return should be effected before the birth. That meant that the period within which it could be effected was limited to about two months. The decision was made accordingly.

From the testimony upon the Inquiry and from the recording in the Society's files, I am satisfied that at least two factors were given undue

consideration during the meeting of May 6, 1976. They were the attendance of Annals Popen and Jennifer Popen at the Parent Effectiveness Training Course and Annals Popen's attendance at Alcoholics Anonymous.

Under the date of March 29, 1976 Mrs. Lo had written in her recording in the Society's file:

"...Due to his involvement with A.A. and apparent intention to enroll in the Parent Effectiveness Training Course, Mr. Popen was put on probation..."

Under the date of April, 1976 she wrote:

"Mr. and Mrs. Popen really need to go to the P.E.T. course to acquire enough knowledge on disciplining children."

"...Mr. Popen has been going to A.A. meetings and stated that he felt so much better because he can control himself now..."

"...The P.E.T. course started on April 26th. The Popens enjoyed the course very much. They were fascinated by their teacher, Mr. Jim Stevens, and thought he was wonderful. At first, they said, they were a little shy but when Mr. Stevens started to talk they became very interested and forgot about their shyness. Mr. Popen has been having problems with his eyes and cannot read too long. They decided to take turns. Mr. Popen would read one page and Jennifer would read another. Mr. Popen also found it hard to write because he uses his left hand. Nevertheless, they planned to either have him write his own answers slowly or give his answers to Jennifer for her to put down. They understand the only way for them to learn anything in this course is to answer their questions honestly and try to apply what they discuss in their class to their daily lives. Mrs. Popen felt most people had problems with teenagers than with younger children. They were encouraged to bring up their interests and questions with younger children in the class too."

Under the date of May 6, 1976, she wrote:

"...Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose...

...They [Annals Popen and Jennifer Popen] also were urged to apply to each other what they have learned at the P.E.T. course..."

Having heard all of the evidence upon the Inquiry, I am unable to find any valid reason for Mrs. Harvey and Mrs. Lo to have placed so much emphasis upon what they perceived to be the value of the Parent Effectiveness Training Course to Annals Popen and Jennifer Popen and their family.

The Parent Effectiveness Training Course was not designed to deal with problems of child abuse or to assist parents who had abused their children or might abuse them. Mrs. Harvey knew that.

Upon the Inquiry she responded to a series of questions as follows:

"Q. To your knowledge was the Course designed to prevent child abuse?

A. No.

Q. It was more designed to teach parents how to raise children and how to discipline them properly and direct children in the proper way, isn't that right?

A. Yes. Parenting skills.

Q. Parenting skills, that's a good expression. So that it wouldn't be much protection against a child being abused, the fact that they were taking that Course.

A. Indirectly there would be.

Q. Alright, can you explain why?

A. Yes. One of the problems in a child abusing household is lack of communication and lack of cohesion between the parents.

Q. Lack of communication between the parents?

A. Well, cohesion in methods and so on. If, and one of the real problems with Mr. and Mrs. Popen were that they couldn't talk together, they reacted against one another, they didn't communicate. If you can get communication going between two people your chances of their acting together rather than separately are much much greater. Then, you can reach them with acting together on behalf of the child.

I might explain one other thing about the use of the Parent Effectiveness Course (sic). We had searched high and low in the community to find something that we could provide for this family over and above counselling. You can't be there twenty-four hours a day. We wanted to have a learning process in addition to what we had, and all we could find in the community that was available to us was the Parent Effectiveness Training Course and I had been discussing it with Mr. Stevens beforehand."

I am unable to attribute much weight to Mrs. Harvey's view that attendance at the Parent Effectiveness Training Course would be of value in Kim's case. The course was not designed to assist abusing parents. By Mrs. Harvey's own words, it was all that the Society could find. I sense it was a sort of last resort, or facade of positive action by the Society regardless of its relevance to the problem. The instructor was not aware of the suspected presence of child abuse in the Popen household.

It is even more surprising that attendance at that Course would be an important factor in any decision made on May 6, 1976. In her recording for April, 1976 Mrs. Lo wrote that the particular Course to be attended by Annals Popen and Jennifer Popen

began on April 26, 1976. There was testimony that it did not begin until April 28, 1976, but the difference of two days is not important. There was no satisfactory evidence as to how many sessions of the Course had been held between April 26 and May 6, 1976 or at how many of those sessions either or both of Annals Popen and Jennifer Popen had attended or what benefit, if any, they had derived from such attendance. Possibly two sessions were held. Even if Annals Popen and Jennifer Popen had attended both sessions, it would not seem that such attendance would justify any conclusion that it contributed to whatever motivated Mrs. Lo to write as she did on May 6, 1976 that the home situation was greatly improved and the parents were doing their best to get things out of the course. That they were "doing their best" does not mean they were getting anything out of the Course.

In her testimony upon the Inquiry, Jennifer Popen described the Parent Effectiveness Training Course as one designed for parents of older children. She had discussed it with Mrs. Maughan. Mrs. Maughan in her testimony expressed her doubt as to any value derived by Annals Popen and Jennifer Popen from the Course. In light of that evidence and Mrs. Lo's own earlier recording, reproduced above, setting forth some of the problems encountered by Annals Popen and Jennifer Popen upon the Course, I doubt that they received any benefit from it. Kim's death supports my view.

Mrs. Lo's testimony that the Course was to help parents communicate with the child was an illustration of her naivete. It corresponded in part with Mrs. Harvey's view that the Course assisted in establishing communication between the parents. I am not satisfied that Mrs. Lo had any independent idea as to what the course contained or what value might flow to Annals Popen and Jennifer Popen from it.

It is tragic that Mrs. Harvey deluded herself as to the value of the Parent Effectiveness Training Course in Kim's case. That Annals Popen and Jennifer Popen were attending the Course and that the Society had made arrangements for them to do so affected the actions of others.

Mr. Brouwer spoke of it in the pre-sentence report. He viewed it positively. Mrs. Lo had told him about it.

Judge Nighswander considered the pre-sentence report on March 29, 1976. It would have had some bearing as the learned Provincial Judge deliberated and decided upon an appropriate sentence for Annals Popen and the terms of probation.

Mrs. Lo, subordinate to Mrs. Harvey, certainly believed that the course was of value.

It was only upon the Inquiry that Mrs. Harvey acknowledged that the Course was a facade in relation to Kim's case. Even then it was not a forthright acknowledgement. She said:

"We had searched high and low in the community to find something that we could provide for this family over and above counselling...all we could find...was the Parent Effectiveness Training Course..."

Words such as those are not a strong endorsement of the value of the course to the Popen family.

In my belief that reliance on the involvement of Annals Popen and Jennifer Popen in the Parent Effectiveness Training Course was merely a facade, I am supported by other portions of the testimony upon the Inquiry and the absence of testimony in other areas. I have spoken of the short period between April 26 and May 6, 1976. There was testimony to the effect that the Course would involve sessions over eight weeks. There was no testimony of any effort by Mrs. Lo or Mrs. Harvey to inquire of anyone other than Annals Popen and Jennifer Popen as to their attendance upon the Course and its value to them. It would seem that further inquiries would have been a natural extension of any genuine reliance upon the Course as an important factor in decisions in Kim's case.

The testimony was that Mrs. Harvey did not discuss Annals Popen and Jennifer Popen with the director of the Parent Effectiveness Training Course until after its conclusion. That would have been in mid or late June, 1976, two weeks or more after Kim's

return home and five or six weeks after the May 6, 1976 meeting at which the date of her return was determined. Only then did she advise him of their particular problem of suspected child abuse.

She defended her decision to keep that information from the Course director. She said she felt it might have exposed Annals Popen and Jennifer Popen to unwarranted problems in the Course. I cannot follow the logic of that. Surely she must have had confidence in the director. Surely that confidence would extend to reliance upon his judgment and discretion as to how he might use that information. It is my view that, in the circumstance of the Course not being directed generally into the area of child abuse, Annals Popen and Jennifer Popen would receive help from it for their special problem only if the director were aware of that problem and able to adjust the content of the Course to meet it.

I am satisfied that, through no fault of the director of the Parent Effectiveness Training Course, it was of no value to Jennifer Popen and Annals Popen in relation to Kim. Inadvertently, because of the sham created by Mrs. Harvey, it contributed to the tragedy surrounding Kim. Others mistakenly relied upon what they took to be positive action by the Society and Mrs. Harvey's endorsement of the Parent Effectiveness Training Course after, presumably, appropriate investigation and assessment of its content in relation to the problem or problems in the Popen household.

In truth, Mrs. Harvey and the Society really did not know what problems were in that household.

I find it of interest to note that throughout the written records of the Society, the emphasis is upon the benefit which Annals Popen derived from the Parent Effectiveness Training Course. My interest is aroused because Mrs. Harvey on a number of occasions, while testifying upon the Inquiry, stated her certain belief that Jennifer Popen was the abusing parent and the parent to whom the greater effort by the Society should be devoted.

One such instance occurred when Mrs. Harvey was asked a series of questions and responded as follows:

"Q. Was the Parent Effectiveness Training Course taken into consideration at that meeting? [the meeting of May 6, 1976]

A. Yes, it was, because a course like that is much more effective if the child is there, because you have to discuss experiences with the child on an ongoing basis. I wouldn't have returned her just because the parents were going to the Parent Effectiveness Training Course though.

Q. No. Well, were you concerned during this period of time as to which of the two parents was causing injury to the child?

A. No.

Q. All right. Do you want to elaborate on that?

A. I was sure it was Jennifer.

Q. You were sure it was Jennifer?

A. Yes.

Q. Oh now, I think you're the first person who's indicated that. What did you base that opinion on? I'm talking about May of 1976, you were sure...

A. I was sure from the very beginning of our contact with the case that it was her.

Q. What did you base that on?

A. The nature of the injuries and her attitude and the father's personality.

Q. Did you express this to Mrs. Lo?

A. Oh yes.

Q. You told her that it was Jennifer that was injuring...

A. I told her I was pretty sure and we would focus on Mrs. Popen no matter what the court said or found or who they found guilty, that Mr. Popen had his probation officer and we would work with him too, but that we would focus our attention on the mother, because we were sure she was the one.

Q. Mrs. Lo was sure as well?

A. Well, I don't know whether she was as convinced as I was, but I was convinced.

Q. What about Mr. Carter?

A. I don't know.

Q. You never discussed it with him?

A. No, not that I remember anyway."

Despite the certainly in her own mind, Mrs. Harvey permitted others to feel that the attendance of Annals Popen at the Parent Effectiveness Training Course was a positive advantage to Kim's case. Among those others was Mr. Brouwer who, in part because of information from Mrs. Lo, wrote optimistically of the future for Annals Popen and Jennifer Popen. Mrs. Lo told him that Jennifer Popen would be attending the Parent Effectiveness Training Course. As Mrs. Lo's supervisor, Mrs. Harvey was or should have been aware of that. She did nothing to alert Mr. Brouwer that the Children's Aid Society intended to devote greater attention to Jennifer Popen. Indirectly, because of the pre-sentence report, Judge Nighswander may have been misled as to the value of the Parent Effectiveness Training Course in this particular case.

Another facade or sham was Annals Popen's involvement with Alcoholics Anonymous.

Mrs. Harvey's involvement in the sham is surprising. On her own testimony Annals Popen's participation in or attendance at Alcoholics Anonymous should not have been of any great importance in

relation to Kim's care and safety. I have already set forth one portion of her testimony indicating her certain belief that Jennifer Popen was the abusing parent.

Thus, it is even more difficult to understand why Mrs. Harvey would permit so much positive emphasis to be placed on Annals Popen's attendance at Alcoholics Anonymous. With reference to the Parent Effectiveness Training Course, Jennifer Popen was expected to attend with Annals Popen, so she would be expected to receive from it whatever Annals Popen might have received. But Jennifer Popen did not attend Alcoholics Anonymous.

That Mrs. Harvey would permit the sham is consistent with her actions in Provincial Court (Family Division) when Jennifer Popen testified. Mrs. Harvey made no effort to advise Judge Nighswander of her belief as to Jennifer Popen's involvement with Kim's injuries. She did not cross-examine Jennifer Popen who testified as to injuries suffered by Kim at the hand of Annals Popen when he had been drinking.

Again Mrs. Harvey knew, or should have known, if she was properly performing her supervisory duties, that Mrs. Lo had been interviewed by Mr. Brouwer while he was preparing the pre-sentence report. Mrs. Lo told Mr. Brouwer of Annals Popen's attendance at Alcoholics Anonymous and the positive results flowing therefrom. That too may have had some bearing upon Judge Nighswander's decision as to an appropriate sentence for Annals Popen.

The next criticism of Mrs. Harvey relates to her failure to act appropriately on July 26, 1976 when Mrs. Lo reported orally that she had noticed some changes in circumstances within the Popen home. Those changes related particularly to Jennifer Popen's attitude and behaviour.

Mrs. Harvey contented herself by advising Mrs. Lo to prepare, file and serve an application for an order placing the Society in a position of supervision of Kim's care.

Knowing as she did that Kim had been abused in the past and suspecting as she did that Jennifer

Popen was involved in that abuse, Mrs. Harvey should have done more. She should have arranged for a more experienced worker, perhaps even Mrs. Harvey herself, to visit the Popen home with Mrs. Lo and to undertake whatever other action might be advisable to determine if Kim should be removed at that time. Kim was still, by virtue of Judge Nighswander's order of February 25, 1976, a child in need of protection and in the care and custody of the Society. Mrs. Harvey should have realized that Kim was in a situation in which she might be abused. Mrs. Harvey should have remembered that police officers, Mrs. Kirby and Mr. Carter had forcefully expressed opposition to the basic decision to return Kim even if no one apposed the subsidiary decision that the return be in May 1976.

On July 26, 1976, Mrs. Harvey failed Kim by leaving her in that position of possible danger without any consideration as to the extent of the risk and the advisability of removing Kim again.

But for the vigorous representations of others after Kim's death, Mrs. Harvey would have repeated her lack of thought and action in relation to Kim's infant brother. Until others pressed her, Mrs. Harvey did not feel she was entitled to remove that infant from his home.

This leads into another area of criticism of Mrs. Harvey. Despite her training, experience and supervisory position she lacked a satisfactory knowledge of the provisions of The Child Welfare Act at least with reference to some of the matters that arose during Kim's case.

She knew that Mr. Carter was accepting Mr. Higgins' stricture. He was staying away from Jennifer Popen and Annals Popen and thus was not performing his duties. She did not even contemplate that it might have been appropriate to advise Judge Nighswander of the circumstances and seek some clarification of the position. She said that it was not until much later that she learned that she could have returned to the Court to seek some judicial assistance to permit the Society to fulfill its duties. She did not even feel it necessary to speak to Mr. Lovatt for his advice or for authority to retain a solicitor.

She testified that she, like Mr. Carter, was distressed by the arrangement to accept Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act and to withdraw the charge against Jennifer Popen. She said that seriously affected the application of the Society for an order placing Kim in its care. She felt it prevented her from presenting all the evidence which until then she intended to present. I have already commented upon the inadequacy of her presentation of that application.

Mrs. Harvey was in serious error in that understanding. The two proceedings were separate and distinct. There is provision for them to be joined, but that was not done or even contemplated. The finding of guilt against Annals Popen would certainly strengthen the Society's application. The withdrawal of the charge against Jennifer Popen would not in any way, in law, inhibit the Society, upon its application, seeking to show that Jennifer Popen was involved in some way, directly or indirectly, with Kim's injuries. The withdrawal of the charge against Jennifer Popen was not a finding adverse to or binding upon the Society in performance of its duties. That withdrawal did not render inadmissible any evidence that otherwise would have been admissible upon the hearing of the Society's application.

In any event, I have found that the Society were apprised of Mr. Higgins' proposal and did not object to the intention of the Crown Attorney and the Sarnia Police Force to accept it. Mrs. Harvey was in Court on behalf of the Society on February 23, 1976 when the proposal and acceptance were implemented. She did not voice any objection. If she had any concern about the effect that might have upon Kim, she owed it to Kim to voice the concern. She did not speak up.

While Mrs. Harvey was aware that The Child Welfare Act contemplated renewal, variation or rescission of any order thereunder, she was not aware that Mrs. Lo lacked that knowledge. Mrs. Lo testified that she understood the initial order of February 25, 1976 prevented the Society from seeking any greater or other order. That indicates a failure by Mrs. Harvey, as Supervisor, to ensure that Mrs. Lo had an adequate knowledge of the provisions of The

Child Welfare Act. If Mrs. Harvey was aware of Mrs. Lo's lack of knowledge, her failure to instruct Mrs. Lo and correct her misunderstanding is all the greater.

All of the criticism which falls on Mrs. Harvey is as a result of her own personality and attitude. Her qualifications for her position as given by her appear adequate. In practice they are less so.

While Mrs. Harvey belittled any suggestion that she was a dominating and unapproachable supervisor I find she was such a supervisor.

She demonstrated that forcefulness when she persisted in her decision that Kim was returning home even in the face of strong objection from police and the Society's personnel.

The two employees of the Society who objected to her decision were removed from responsibility for it. Mr. Carter, who was subordinate to Mrs. Harvey, was directly and promptly removed by her. Mrs. Kirby, who was not directly subordinate to Mrs. Harvey, was indirectly removed in due time by the process of implementation of Mrs. Harvey's decision within the framework of the organization of the Society which gave the Family Services Department, and thus Mrs. Harvey, a pre-eminent position of authority.

She demonstrated the forcefulness of her approach when she spoke of her ability to oppose counsel in court. That same belief in her own ability is shown by her decision to proceed on Kim's case without retaining counsel.

Even that showed a bit of her assessment of her position within the Society. She was asked if she would have needed permission from Mr. Lovatt before retaining counsel. She replied that she might discuss the matter with Mr. Lovatt, but she did not require his permission.

That reply is directly contrary to the resolution of the Board of Directors passed in her presence. By that resolution, counsel were to be retained only if Mr. Lovatt thought it necessary.

Still another example of her self-confidence was her testimony to the effect that with training or education, presumably by her, Mr. Higgins could become a good member of the Board of Directors of the Society. He was the man whose talents and abilities as counsel were admired by her. He was the man who had successfully stood off the Society for almost six months until the time was appropriate for his clients to have a resolution of the matter. I know Mr. Higgins only as a gentleman who testified upon the Inquiry. My assessment of him is that he was not too likely to accept the concept that Mrs. Harvey could train or educate him.

Perhaps the most telling assessment of Mrs. Harvey's nature and attitude came in the testimony of Mrs. Farina whom I have earlier described as being a gentle and compassionate woman.

A question was put to Mrs. Farina with reference to a workshop convened by the Ontario Association of Children's Aid Societies. The workshop was with reference to court services. She was asked if she had spoken to Mrs. Harvey about it. Her reply was as follows:

"A. Yes. At that time, they would have been in the Fall of 1975 and we had arranged a court workers 2-day workshop for court workers of the societies and we sent out our advance material and had heard from all but two of the societies, of people wishing to attend. One of those two was Sarnia, so I phoned to be sure that, you know, that they had got the material. The second society was one of the more remote Northern ones and they hadn't got the mailing, but Sarnia had and since Mr. Lovatt was away I spoke to Mabel Harvey and asked her if people, in fact, from Sarnia were planning to attend and I was told that no, they weren't, and that really the Association had nothing to offer that would be of help to this Society, and conversation. So that was my conversation then with Mrs. Harvey."

That reveals a lot. It shows that Mrs. Harvey felt that the Society could not benefit from

the workshop. It is broad enough to show that she felt the Society could not benefit from anything the Ontario Association of Children's Aid Societies might have to offer. Forty-eight of the other forty-nine children's aid societies in Ontario were sending staff members. The forty-ninth was in a remote area and had not received notice of the workshop.

When one thinks of all of the shortcomings of the Society described in the testimony upon the Inquiry, even the testimony of directors, officers and employees of the Society, and particularly the testimony of Mr. Zwerver, Mr. McCabe and the members of the Farina Committee, it must have taken quite a person to maintain that the Ontario Association of Children's Aid Societies had nothing to offer to the Society.

Surely as Mrs. Harvey reflects now upon Kim's case and the Inquiry she must realize how wrong she was. She must realize that the Society needed help.

That attitude by Mrs. Harvey was perhaps an enlargement or a manifestation of what I describe as the insular position of the Society. In the main that was demonstrated by the almost complete absence of communication between the Society and other organizations or individuals in the community in relation to Kim's case. What little communication there was, was initiated by others. Only once, on July 26, 1976, did the Society initiate a communication. Mrs. Lo telephoned Mr. Brouwer.

Mrs. Harvey was, in practice, supreme within the Society in relation to the management of cases. She had an over-abundance of self-confidence and assurance in her own abilities. She imposed her untrammelled will upon others in the Society. She sought assistance from no one. She rejected, out of hand, suggestions made to her.

The self imposed isolation of the Society was a great weakness.

I have already written of Mrs. Harvey's testimony wherein, when speaking of her decision that Kim should be returned to her parent's home, she said "apparently at some point I make the decision that it

would be worthwhile trying it." At another point, in the same context, she said "I thought we could try it."

There was no valid support for that decision. All of the expert testimony condemned it.

With all due respect to Mrs. Harvey, she reduced the basis for the decision to one of "trying." There was an element of experiment or test or perhaps even gamble in her decision to try. She was prepared to conduct an experiment without any professional basis therefor or control thereof. Mrs. Harvey was prepared to risk Kim's safety.

The experiment was doomed to tragic failure. Without professional basis or control it was no more than a gamble. Mrs. Harvey gambled. Kim's safety was at stake. Kim lost.

Chapter XV

The Role of William J. Lovatt

In Chapter XIV I state that, apart from Kim's parents, Mabel Harvey was the most important person in Kim's life from June 17, 1975 until her death on August 11, 1976.

Mabel Harvey assumed that importance only because of the failure of William J. Lovatt, Local Director of the Society during all of Kim's life, to perform his duties and fulfill his responsibilities adequately or reasonably.

Perhaps in keeping with the tone of the entire operation and administration of the Society during Kim's life that failure of performance was not the result of a formal and structured assignment of duties by Mr. Lovatt to Mrs. Harvey. It came about as a result of Mr. Lovatt's self-imposed restriction of his activities within the Society and his tacit consent to Mrs. Harvey's assumption of or ascendancy to authority.

If Mr. Lovatt's involvement and interest in Kim's case was typical of his involvement and interest in the cases or matters being dealt with by the Society, it is clear that he was derelict and incompetent in the performance of his duties. There was no testimony upon the Inquiry to satisfy me that Kim's case, insofar as Mr. Lovatt's involvement and interest was concerned, was in any way atypical.

In the sense of the nature of the case and the severity and multiplicity of the injuries which Kim suffered through the periods of her life while she was in her parents' home, Kim's case was atypical. No one of the personnel of the Society who testified upon the Inquiry suggested there had previously been such a case dealt with by the Society.

But even a case of that severity was not sufficient to draw Mr. Lovatt from his apparently all-consuming interest in and concern about the financial and budgetary aspects of the Society's administration.

Mr. Lovatt testified to the effect that his office door was open to the staff of the Society and to others at any time. He seemed to take great pride in that. It may be that his door was physically open, but it would seem that in some way Mr. Lovatt sheltered behind an intangible, but virtually impenetrable screen across the doorway to his office.

The testimony upon the Inquiry which is reviewed in some detail throughout the Report was overwhelmingly sufficient to satisfy me that during Kim's life the organization, administration and operation of the Society were not adequate or satisfactory.

The testimony clearly and amply demonstrated that the practices and procedures employed by the Society, especially in relation to the management of Kim's case, did not satisfy or meet usual, normal or reasonable standards.

The testimony clearly and amply demonstrated that the personnel of the Society, including Mr. Lovatt, and especially those most actively involved in Kim's case, lacked knowledge and expertise which would usually, normally and reasonably be expected to be possessed by social workers responsible for the management of such a case.

All of that is substantially borne out by the testimony of one or more or all of Mrs. Farina, Mr. Heath and Mr. Petersen, who comprised the Farina Committee, Mr. McCabe and Mr. Zwerver, who were assigned temporary duties and responsibilities in the Society in 1978, and Dr. Turner and Dr. Bates. Even the testimony of various members of the personnel of the Society, including particularly Mrs. Harvey and Mr. Lovatt, supports my view.

The deficiencies I have mentioned contributed directly and indirectly to the tragedy of Kim. Mr. Lovatt, as Local Director of the Society, must bear responsibility for those deficiencies.

At the outset I wish to stress that I accept as correct the testimony which expressed commendation for Mr. Lovatt as a man and as a person genuinely interested in and concerned about the well-being of persons, especially children, in the community in which he lived. I am satisfied that he wanted to perform well as the Local Director of the Society. Simply put, he failed. Some matters which contributed to his failure were disclosed in the evidence upon the Inquiry. In other areas I sensed some underlying factors, not clearly expressed, if expressed at all, which may have contributed to his failure.

Mr. Lovatt's *curriculum vitae*, set forth in Schedule 1-E to the Report, discloses his educational qualifications, his employment experience and his involvement in community agencies and activities. Clearly he sought to improve himself so as to enable him to contribute to the benefit of the community he served. Even there his special interest in accounting is disclosed.

Mr. Lovatt became Acting Local Director of the Society in 1968. From Mr. Charko's testimony it would seem that Mr. Lovatt was not confirmed in that position until 1970 after the expiration of what might best be described as a probationary period of eighteen months. That probationary period was required by The Ministry of Community and Social Services, which hereinafter in this Chapter I shall call "the Ministry". Similarly the Minister of Consumer and Social Services shall be called the "Minister".

The probationary period apparently was required because Mr. Lovatt did not possess the qualifications necessary to enable or permit the Society to appoint him to be Local Director without the favourable opinion of the Minister pursuant to paragraph 11(b) of Regulation 86 made under The Child Welfare Act.

In due course Mr. Charko wrote a memorandum to the Director appointed for the purposes of The Child Welfare Act recommending Mr. Lovatt's appointment.

Mr. Charko spoke of Mr. Lovatt's concern about the requirement that he not be confirmed as Local Director of the Society until after that probationary period. Mr. Charko expressed the thought that a local director of a children's aid society appointed from among the personnel of that society might have some difficulty in gaining acceptance or recognition as local director from personnel who might consider the new appointee still to be one of them.

Mr. Charko said there was no statutory or regulatory provision establishing such probationary period, but it was a product of the policy of the Ministry.

Perhaps, so far as Mr. Lovatt was concerned, an unfortunate adjunct of that policy was that during the time he was merely Acting Local Director of the Society, he did not have authority to sign various rather routine documents which therefore had to be sent to the Ministry for signature by the Director appointed for the purposes of The Child Welfare Act.

That lack of qualification is one of the factors to which I alluded when, earlier in this Chapter, I wrote of my having sensed that there were underlying factors, not expressed or at least not clearly expressed, which may have contributed to Mr. Lovatt's failure.

Dr. Turner spoke of Mrs. Harvey's impressive qualifications. He expressed some doubt as to the current validity of her qualifications, but he said she was perhaps the most highly qualified person who, as a social worker, was involved in Kim's case.

I sense, without proof or even direct testimony, that Mr. Lovatt, with his own limited qualifications and his own reserved manner, stood somewhat in awe of Mrs. Harvey with her apparently superior qualifications and her dominant manner. That may have been an unexpressed reason for Mr. Lovatt's virtual abdication of responsibility and authority and assignment of essentially final authority for the management of cases in the Society to Mrs. Harvey while he busied himself with

administrative, fiscal and budgetary matters and even more mundane physical tasks.

As one reviews Mr. Lovatt's *curriculum vitae* it would seem that Mr. Lovatt's appointment as Local Director of the Society was mainly because of his long service to the Society in different capacities from 1959. No testimony indicated that the Society looked beyond its own personnel to fill the position. Thus, it might be said that, for his purposes, Mr. Lovatt was in the right place at the right time.

There was no testimony to indicate what criteria, if indeed there were any such criteria, were applied by Mr. Charko in determining that he would recommend Mr. Lovatt's appointment as Local Director of the Society and by the Minister in determining that he would accept and act upon that recommendation.

It may be that the apparent absence of appropriate criteria for use by Mr. Charko and the Minister in connection with the appointment of local directors of children's aid societies contributed to the placing of one such as Mr. Lovatt in such a responsible position.

The absence of any effective ongoing assessment by the Ministry of Mr. Lovatt's performance of his duties after his appointment as Local Director of the Society certainly contributed to the sad state of the Society as revealed in 1978.

Dr. Turner's testimony as to the need for social workers to keep their qualifications current in the light of developments in the practice of social work raises a query which flows from that absence of information as to the criteria used by the Minister and Mr. Charko.

Mr. Lovatt was recommended for appointment as Local Director of the Society in 1970. Even apart from any question as to his qualifications for the position in 1970 there was absolutely no testimony to indicate that at any time thereafter he acquired or maintained a standard of knowledge and expertise sufficient for the adequate fulfillment of the duties

and obligations of the position in the succeeding years.

From his own testimony as to his activities I would tend to believe that, as he became more and more engrossed in the purely administrative facets of the administration of the Society, he progressively became less and less aware of the current practices in social work.

I am unable to identify which was cause and which was effect. That is, I do not know if he retreated to the administrative tasks because he recognized his limitations in the performance of other aspects of his position or if his involvement in the administrative tasks prevented him from maintaining a satisfactory standard of qualification to perform the other duties.

Mr. Lovatt was aware of the terminology of section 4(1) of The Child Welfare Act which defines the responsibilities of a local director of a children's aid society. In his testimony he set forth a number of descriptive headings of the work he did on a typical day in 1975, 1976, or 1977 and he assigned to each a figure representing the percentage of the whole of his work day devoted thereto. In tabular form that testimony is reproduced as follows:

Correspondence with Ministry and agencies, including Ontario Association of Children's Aid Societies	15%
Finance including preparation of budget and supervision of expenditures by staff	15%
Personnel matters, hiring, firing, resolution of problems between workers and supervisors, meetings of Personnel Committee and negotiations with Staff Association	10%
Meetings of Board of Directors and Committees of Board, including preparation and collation of statistics and reports	10%
Consultative meetings with supervisors and other staff, including questions of case handling	10%

Meetings with managerial staff including supervisors and office manager	10%
Personal court work in respect of unmarried parents	5%
Direct work with clients	5%
Planning development of the Society, use of personnel	5%
Inter-relationship with other children's aid societies including regional meetings of local directors	5%
Community work	5%
Miscellaneous	5%

He said that a majority of his time sheets kept for certain parts of the year showed that he worked more than 170 hours per month, exclusive of evening work related to but not part of the Society's own work, whereas the average should have been about 132 hours. Without any details of the amount of related evening work, it would seem to me that 170 hours per month, by itself, is not a particularly gruelling work schedule for the local director of a children's aid society.

Mr. Lovatt said that the amount of time which he spent in relation to the Society's budget had increased tremendously, as had his time spent in court.

He described 1976 as the worst year he had experienced insofar as budget preparation and financial control were concerned. That was because of fiscal restraints imposed upon the Society through the Ministry.

In another part of his testimony Mr. Lovatt described his activities on "a typical day in the office." He did not suggest it was the sort of activity which occurred daily or even regularly, but he did say it was indicative of the kind of things that could and did happen.

Were it not for the tragic events which led to this Inquiry some of Mr. Lovatt's testimony would promote chuckles as one envisaged him doing some of the things he recorded. They were the more mundane, physical tasks I mentioned earlier. At the relevant time he was responsible for the administration of the Society with an annual budget of over \$700,000.00, with a staff of about seventeen social workers, including the supervisors, and six clerical workers and with about fifty volunteers.

His typical day began at 9:05 a.m. with the report that a ward of the Society had run away, apparently from a group home. He said he was involved in this because "it required contact with another agency" which wanted to deal with him and not a member of the Society's staff. Presumably that other agency was the police who, he said, had already been informed.

The validity of that stated reason for his personal involvement escapes me when I consider the testimony as to the value of or need for each social worker to develop relationships with workers in other agencies, preferably on an individual basis to develop confidence and understanding each with the other.

If there was validity for the reason given by Mr. Lovatt it should have raised some question in his own mind as to how members of the staff of the Society were performing their duties. There was no testimony that Mr. Lovatt was at all disturbed by what would seem to be an expression by others of a lack of confidence in the ability of the staff of the Society. Indeed Mr. Lovatt seemed to regard all of this as some sort of re-assurance of his own importance and ability.

For my part, I think it is a sad commentary upon the Society and upon Mr. Lovatt, as its Local Director, that the Society's worker responsible for the management of that particular ward or group home was not accorded the courtesy or confidence of the other agency. Mr. Lovatt abetted that unfortunate situation.

At 9:20 a.m. he spoke with the foster parents of a ward of the Society. They wanted his

approval of an unusual expenditure and called him because he was known to be "controlling the Agency's finances". Again, in the absence of testimony that the Society's worker involved with the management of that ward's case had been approached by the foster parents about the matter and had refused their request, I doubt the validity of the need for Mr. Lovatt to have become involved.

Further it is a bit surprising to me that the testimony did not indicate that Mr. Lovatt was at all interested in speaking with and obtaining the views of the Society's worker and his or her supervisor before dealing with the request by the foster parents.

The next item is the first to raise a tentative chuckle. Mr. Lovatt did laugh as he spoke of it. At 9:40 a.m. Mr. Lovatt carried a typewriter downstairs because a volunteer would be using it. Such a task, so minor, both in time involved and importance of subject matter, should not merit mention. He said he had to move the typewriter because often he was the only male in the office and funds were not available to enable the employment of anyone for that purpose.

In the same vein and for the same reasons, at 9:50 a.m. he helped a "foster home finder" load a crib into the Society's station wagon. He said only three or four of the Society's volunteers were male, but the Society moved a lot of furniture among its foster homes and its office.

Assuming an eight hour work day, which is longer than what his time sheets indicate apart from "evening work", those two menial tasks consumed more than 4% of that day. That would seem to be an entirely disproportionate allocation of the time of the Local Director of the Society.

Then at 10:00 a.m. Mr. Lovatt spoke with a Supervisor and one of the Society's workers about a problem in a group home. The Supervisor had dealt with the matter, but Mr. Lovatt wanted to impress the worker with the importance of the matter.

There was no testimony to indicate that the Supervisor had not handled the matter appropriately.

Nor was there testimony to indicate that the worker required any comment from Mr. Lovatt to ensure that the importance of the matter was recognized.

At 10:30 a.m. Mr. Lovatt received a telephone call from the Probation Services about a juvenile who might be placed in the care of the Society by a court. That arose from an amendment of The Training Schools Act which resulted in many juveniles being placed in the care of children's aid societies rather than elsewhere.

At 10:40 a.m. he began to deal with correspondence.

He could not have done much about the correspondence because, at 10:45 a.m., a Supervisor spoke to him about the earlier request that day by foster parents for an unusual expenditure. Again I note the apparently inappropriate sequence of approaches to Mr. Lovatt.

At 11:00 a.m. the run-away ward had been apprehended in a city some distance away. An escort was required to return the child to the Society. There was discussion as to the appropriateness of a volunteer performing that duty. The suggestion was rejected. A worker was assigned.

Again, it seems to me that any question of the possible role of a volunteer in such an instance should have been resolved earlier as a matter of general policy of the Society.

No reason was given for Mr. Lovatt's personal involvement. There was no suggestion that the Supervisor and social worker involved in the case could not have made arrangements for any necessary escort. It was an example of the recurring theme that there were no appropriate codes of policies and procedures.

At 11:30 a.m. Mr. Lovatt "hastily" prepared a report for a luncheon meeting. He attended the meeting from 12 until 1:30 p.m. Such meetings were usually with members of the Board of Directors and were usually held in the Society's offices.

From 1:35 until 2:30 p.m. he "[tried] to cope with correspondence."

At 2:30 p.m. he began to try to arrange group home placement for the juvenile mentioned earlier by the Probation Service and who had been brought to the Society's office. Mr. Lovatt said he was involved because "the Local Director has more influence than a regular worker."

Again I query the validity of that reason in the absence of any testimony to suggest that "a regular worker" had tried and failed and his or her Supervisor was unable to resolve the matter. If Mr. Lovatt became personally involved in the first instance, he deprived the "regular worker" of an opportunity to develop the community network which, the testimony of experts satisfies me, is necessary to the adequate and successful functioning of a social worker. If the regular worker and Supervisor were unable to resolve the matter, it might have indicated that those persons required some guidance in the performance of their duties.

That particular activity by Mr. Lovatt might have involved telephone calls to municipalities some distance from Sarnia as well as local calls.

At 3:10 a member of the Board of Directors visited with Mr. Lovatt and discussed the affairs of the Society. Such visits and discussions were often impromptu and unannounced. He cited them as examples of his open-door-policy and availability to all.

At 4:15 p.m. Mr. Lovatt tried to finish dealing with correspondence. He noted the annoyance of the Society's office secretary because the hour was late and some matters were "quite urgent."

The next item tends to raise another chuckle when coupled with one he mentioned a bit later. Mr. Lovatt said that at 4:45 p.m. the Society's station wagon had "broken down again" and required service. He said he was involved because he "dealt with the running of the car fleet after [the] Society's former office manager died." The station wagon was an older vehicle. It was the only vehicle operated by the Society. One vehicle hardly constitutes a fleet.

He gave no reason for the inability of the current office manager of the Society to perform the same duties as were performed by her predecessor beyond saying "there was no one else able to do it." I am not satisfied as to the validity of the reason given for Mr. Lovatt's personal involvement.

From my assessment of members of the staff of the Society who testified and from the testimony of Mr. McCabe and Mr. Zwerver as to the competence of at least some of the clerical staff of the Society, I am satisfied that Mr. Lovatt assumed the task of managing the "fleet" voluntarily and unnecessarily. He might better have left management of the "fleet" to someone else while he dealt with urgent correspondence.

He said that in managing this part of his duties he often asked his wife for assistance "in moving the car about."

At 4:47 p.m. Mr. Lovatt began to check statistics for the month and to prepare his monthly report for the meeting of the Board of Directors of the Society.

At 6:20 p.m. he left for home in the Society's station wagon, followed by his wife driving their personal vehicle so as to drive him from the service station where he would leave the station wagon.

At 6:40 p.m. he received a telephone call at his home from the police who had misplaced the Society's duty worker roster.

Mr. Lovatt took a message from the police and then passed it to the appropriate worker on the Society's staff. One can only wonder why he would not simply have given that worker's name and telephone number to the police. There did not appear to have been any reason for Mr. Lovatt to have done more than that.

Then from 7:00 p.m. until 11:30 p.m. he attended the meeting of the Board of Directors. I presume it was then that he presented the report he began to prepare at 4:47 p.m.

He acknowledged that the Board of Directors of the Society relied heavily upon him during their consideration and discussion of the various matters dealt with at meetings of the Board of Directors.

All of that conveys to me a state of flurrying disorganization. Mr. Lovatt was involved in picayune details which could easily and appropriately have been handled by others, whether they be social workers or clerical employees of the Society.

What I note particularly is that none of that day appears to have been devoted to any major broad concerns of the Society or to a consideration of development of policies and procedures or even the budgetary and fiscal problems of the Society.

The proverbial molehills received attention while the mountains remained unattended.

I note also that it was 11:30 a.m. before he began to prepare a report for a meeting with members of the Board of Directors which began at twelve noon. Even he acknowledged that it was prepared in haste. I would wonder just how thorough any report prepared under those conditions could be.

In the same vein I note it was not until 4:47 p.m. that Mr. Lovatt began to check material and to prepare his monthly report to the Board of Directors. I gather the meeting at which the report was to be presented began at 7:00 p.m. Mr. Lovatt's secretary had been showing annoyance at 4:15 p.m. because he was only then dealing with some "quite urgent" correspondence. How much more annoyed would the secretary be if asked to type and perhaps duplicate the monthly report which he began to prepare at some time after 4:47 p.m.

And again, how thorough, complete and accurate could a report prepared under such conditions be?

It would seem that Mr. Lovatt was not well organized. He dealt with minor matters which others could have handled, but left preparation of his own reports to the Board of Directors until virtually the last minute and left "quite urgent" correspondence

until 4:15 p.m. which too was virtually the last minute.

All of this sort of testimony by Mr. Lovatt is placed in an appropriate perspective when reviewed in conjunction with the later testimony of Harry Zwerver and Mr. Zwerver's earlier reports to the Board of Directors.

Mr. Zwerver's *curriculum vitae* forms part of Schedule 1-E to this Report. He was well qualified and articulate. On March 7, 1978 he was appointed as Special Field Consultant of the Ministry responsible for the operation of the Society. He began his duties on March 13, 1978. In that arrangement Mr. Lovatt remained as Local Director of the Society, but his reporting relationship was to Mr. Zwerver who was responsible for the overall administration of the Society.

Mr. Zwerver was also required to assess the Society's operations, particularly in relationship to some areas of service that required prompt attention.

Mr. Zwerver's initial impression was that the Society was in a state of confusion. He recognized, I think appropriately, that some of the confusion arose from concerns engendered by the then recently publicized developments in relationship to Kim's case.

He concluded that the operations of the Society were not then satisfactory. He attributed that condition in part to "inadequate procedures." He described some of the Society's procedures as being "seriously inadequate". He said confusion within the Society contributed to the unsatisfactory condition.

As requested by the Board of Directors of the Society he made a report to that Board on April 11, 1978. A copy of his written report was produced as an exhibit upon the Inquiry and is reproduced as Schedule 2-V to this Report.

That report is not entirely and solely referable to Mr. Lovatt, but, particularly when considered in conjunction with the reports of the Farina Committee, it gives a picture of shocking

inadequacy and disorganization of which Mr. Lovatt, as Local Director of the Society, should have been aware. By the same token he should have done something about it. He did nothing. He must bear the responsibility.

That is all the more so because Mr. Lovatt himself was a part of the inadequacy and disorganization.

Mr. Zwerver's general observation was that there were members of the staff of the Society whose knowledge of The Child Welfare Act and the Regulations made thereunder was inadequate. There were practices and procedures which did not meet the statutory and regulatory requirements.

Mr. Zwerver said that Mr. Lovatt acknowledged to him that members of the staff of the Society did have various levels of knowledge of the legislation and of the Society's function. That is understandable. But Mr. Zwerver added that he told Mr. Lovatt that the level of such knowledge possessed by some of the staff was inadequate. He said Mr. Lovatt agreed with him. That is not acceptable. He should not have permitted any member of the staff to maintain an unsatisfactory level of knowledge. There was no testimony that Mr. Lovatt had taken any steps to ensure that that unsatisfactory situation was corrected.

It would seem that rather than moving a typewriter, loading a crib, driving a station wagon in for service and doing some of the many unimportant things Mr. Lovatt described in his testimony, he might more appropriately and profitably for the Society and those whom it served, particularly in this context, Kim, devoted some of his efforts to ensuring that the Society had appropriate policies and procedures and that all members of its staff obtained and maintained an adequate knowledge thereof and of the applicable legislation and regulations.

Mr. Zwerver said that problem was compounded by the almost total lack of up-to-date written policies and procedures. When asked for material upon the policies and procedures of the Society, Mr. Lovatt was able to deliver to Mr. Zwerver only two short documents. They are reproduced in Schedule 2-L

and 2-M to this Report and were commented upon by members of the Farina Committee in their reports and testimony upon the Inquiry.

There was testimony upon the Inquiry to the effect that many children's aid societies in Ontario did not have extensive documents setting forth policies and procedures, but they functioned well. That they did so is probably because of particular circumstances, perhaps of leadership or supervision or of personnel, which did not exist in the Society.

The Society clearly did not function well. The absence of written policies and procedures contributed to that unsatisfactory condition.

Mr. Lovatt in his testimony stated that he spent a considerable amount of time and energy upon budgetary and financial matters. He said that about fifteen per cent. of his time was devoted specifically to those matters. Other headings under which he listed the expenditure of his time would seem also to have some relationship thereto.

Some such would be correspondence, negotiations with the Staff Association, preparation and collation of statistics and reports, managerial meetings and planning. So too would some of the matters I have already mentioned.

The financial and budgetary concerns of the Society were directly affected by some of the matters mentioned by Mr. Zwerver. It must also be remembered that Mr. Zwerver advised Mr. Lovatt of the contents of his report as he prepared it for presentation to the Board of Directors of the Society and Mr. Lovatt did not disagree with Mr. Zwerver's observations and assessment of conditions within the Society.

Some portions of Mr. Zwerver's report to the Board of Directors of the Society and of his testimony upon the Inquiry were addressed specifically to consideration of the budgetary and fiscal affairs of the Society as he found them in March, 1978 and his recommendations for rectification of what he said were deficiencies therein.

Mr. Zwerver, in paragraph A.2 of his report, wrote that with budgetary pressures upon

children's aid societies "service criteria tend to be determined by the workload pressures at intake." He wrote that the Society's staff were not clear as to the Society's service criteria and as to what cases should be or should not be opened for service and why. He recommended that the Society clarify its criteria for the provision of service.

In his testimony upon the Inquiry he enlarged upon that to say that there was "confusion about when cases were to be opened" and about priorities so that in some instances decisions were dictated by "pressure of time [and] the availability or non-availability of money." That led to inconsistency in decisions and, in some cases, to the failure of the Society to provide necessary services. That in turn led to others in the field being dissatisfied with the Society and its response to matters referred to the Society.

Later in his testimony Mr. Zwerver expanded his comments to say:

"...it was obvious from our preliminary observations that there were no clear criteria for (a) opening cases and consequently as a result of that there were no clear criteria for statistically opening cases, so even if a Worker decided that a case ought to be opened for service it did not necessarily mean that at the point where activity began there was a statistical counting of that activity, either in terms of a case being opened so that there was a record of that activity, and consequently also the statistical count that could be used in discussions with the Ministry around staffing requirements for instance was also then not accurate, and there was a great deal of activity going on in the Agency that was not being counted by the staff and this created substantial disparity between the actual activity going on and what appeared to be going on on paper..."

"...staff were feeling pressured and a great deal of that pressure was due to heavy work load but when one looked at the

statistical information available related to their work load it appeared that there was not a heavy work load, and that became a serious concern."

Mr. Zwerver testified that he arranged for the establishment and maintenance of a proper statistical system to provide a more accurate count of the activities of the Society. Clerical staff operated that system as much as possible to relieve the pressure on the social worker staff and to leave them more time to serve their clients.

It was clear to me that that sort of matter directly affected the preparation of the Society's budget and the approval or rejection of that budget by the Ministry.

That was borne out by the testimony of Mr. Zwerver and Peter McCabe who, on May 22, 1978, was appointed to be interim Local Director of the Society.

As a result of the proper collation of material from the files of the Society, Mr. Zwerver and Mr. McCabe were able, in June, 1978, to satisfy the Ministry that the Society was understaffed and required more funds. The result was that the estimated expenditures of the Society for 1978 approved by the Ministry were in the sum of \$848,000.00. Mr. Lovatt had earlier presented for approval a budget for 1978 in the amount of about \$821,500.00 and the Ministry was prepared to approve a budget in the amount of only \$725,000.00.

Mr. Lovatt, as Local Director, must bear responsibility for all those deficiencies noted by Mr. Zwerver and Mr. McCabe.

Even more distressing to me, as I place that responsibility on Mr. Lovatt, is to note that he apparently was aware of the problem, but would not or could not face up to it and resolve it. Mr. Zwerver testified in part:

"We did get into substantial discussions before Mr. Lovatt left regarding the method of counting things, when cases were opened, how they were opened, what was legitimate

case activity, how legitimate case activity could be counted and he really said that he was looking to me to develop a better way of counting things out of my particular orientation to hopefully be able to support the arguments that he felt he'd been trying to make to get additional staff in the past and, you know, as it turned out over the course of the next four or five months and I don't think this is all new business that's coming into the Children's Aid Society. We were able to increase the volumes very substantially, at least the numbers reflected I think the volumes in a very different way and consequently when Mr. McCabe and I did go to the Ministry to request additional funds for the Society, there was really no question that there was a need and the need was responded to by the Ministry and they did approve the final submission of the budget based on adequate data."

The important words in that extract are "based on adequate data." Mr. Zwerver stressed that without information from the files of the Society to support the budget which Mr. McCabe and he submitted the approval of that budget would not have been obtained. I accept that testimony.

I am satisfied that Mr. Lovatt was sincere and did devote a lot of effort and time to the financial and budgetary matters of the Society. The time and effort so spent by him were not matched by the results. He was ineffective in those matters and, it seems, he knew it, but would not ask for assistance therein. Some of the problems were of his own making because of the state of the organization, administration and operation of the Society, for all of which he, as Local Director, was responsible.

In his summary of the allocation of his own time Mr. Lovatt said he spent about ten per cent. of his time on personnel matters. Other categories of work to which he devoted time would appear to include some elements referable to personnel matters. He spoke of ten per cent. of his time being devoted to consultative meetings with Supervisors and other staff, another ten per cent. on meetings with

managerial staff and another five per cent. on planning development of the Society and use of its personnel.

Earlier in this Chapter I have set out some comments upon the deficiencies in the knowledge of at least some members of the staff. Mr. Zwerver in his report to the Board of Directors of the Society made some general comment upon this and enlarged upon it in his testimony upon the Inquiry.

In his report Mr. Zwerver wrote:

"Generally, there appears to be a very basic lack of knowledge about the Child Welfare Act and its Regulations. The violations of the requirements of the Act regarding child protection services, including the use and requirements of Court are very serious. This is compounded by the almost total lack of written policies and procedures."

In his oral testimony Mr. Zwerver said that the inadequate knowledge of the legislation possessed by some members of the staff resulted in there being practices and procedures within the Society which did not satisfy the requirements of the legislation.

In his report he recommended that the Society initiate a basic training or retraining programme for all of its social workers and support staff. He also recommended development of written policy and procedure manuals for the Family Services Department.

In his testimony Mr. Zwerver said that on the basis of statistics available from the Society when he arrived in March, 1978 it appeared that there was an adequate number of staff persons to meet the work load requirements. But, at the same time, it was apparent to him that the staff were working much harder than the statistics indicated. The staff were complaining of "phenomenal work load pressures."

He testified that when a proper statistical system was established

"it became apparent very quickly that the staffing of the Society was less than it ought to be."

Mr. Zwerver went on in his testimony as to the adequacy of the staff of the Society to say:

"The other issue related to staffing was that the staff were really a mixed bag of people, very few with formal social work training, either at a graduate or undergraduate level, people with a great deal of experience, people with very little experience."

He said Mr. Lovatt had expressed to him concern about the quality of the staff which Mr. Lovatt had been able to hire in the past. Mr. Zwerver said that led him to fear that he, himself, might then have some difficulty in hiring persons to fill any of the positions and to obtain a better balanced staff in 1978.

In fact, when Mr. McCabe advertised the vacancies and sought applications there was a "flood of applications". While Mr. Zwerver was not directly involved in the employment of any of the applicants, he saw several of the applications and felt the applicants were "well qualified social work staff with a combination of training and experience in child welfare" or were recent graduates of schools of social work with formal training, but not a great deal of experience.

Mr. Zwerver did not appear to accept as accurate Mr. Lovatt's testimony that the Society experienced difficulty in hiring competent staff because of its salary structure and the absence of a university. He said that some social workers prefer to work in smaller communities. He acknowledged that conditions may have changed between 1975 and 1978, but I think that is rather immaterial since his comments were based on his observations in March and subsequent months in 1978 and Mr. Lovatt's comments at that time.

Mr. Zwerver expressed the opinion that experienced social workers contemplating seeking employment with a children's aid society would be

interested in a number of factors. They would be concerned about the support available to them and about the reputation of the society. In a society similar in size to the Society, they would be concerned about the abilities of the local director and supervisors to provide support, training and opportunity to the staff to acquire skills and knowledge.

That opinion is of interest because later in his testimony Mr. Zwerver testified that, over a period of years before becoming involved in any way with the Society, he had heard comments about the Society. The comments were to the effect that all was not well with the Society. The comments were made in general conversation at meetings of persons professionally engaged in social work.

I would infer from Mr. Zwerver's comments that the reputation of the Society while Mr. Lovatt was the Local Director was not high and that that, more than the location of the Society or its salary structure, was a factor in any problem Mr. Lovatt may have encountered in attracting adequate staff.

However, in a final analysis of any problem relevant to the quality of the staff, suffice it to say that there was no testimony upon the Inquiry to indicate that, until Mr. Zwerver arrived upon the scene in March, 1978, Mr. Lovatt acknowledged or stated that difficulty he then claimed. There was no testimony that he sought assistance from anyone to improve the quality of the Society's staff. He did seek authority to enlarge the staff and the Ministry, represented by Mr. Mainville, acceded to that request in 1975. There was no testimony that Mr. Lovatt instituted or even sought to institute any programme to improve the knowledge or skills of the Society's staff.

Mr. Lovatt had sought to further increase the number of the staff of the Society prior to 1978. His efforts were in vain because, despite all his devotion to figures and statistics, he was unable to prepare a submission which supported his position.

The weakness of Mr. Lovatt's effort to increase the staff is demonstrated by the success of the careful and properly documented presentation by

Mr. Zwerver and Mr. McCabe in 1978. Their material demonstrated the validity of their position. Their submission succeeded where Mr. Lovatt's failed. Presumably his too might have succeeded if it were properly prepared, supported by material and presented.

In amelioration of the seeming harshness of what I have just written, I acknowledge that by March 1978, perhaps as much as a result of Kim's death as anything else, the situation surrounding the Society may have changed. Nonetheless, regardless of any change of circumstances, I accept Mr. Zwerver's statement that the submission in 1978 succeeded because it was supported by a properly prepared statistical base which was not earlier available. Thus, I am satisfied Mr. Lovatt's submission failed because it lacked an adequate basis in the records, files and statistics maintained by the Society.

Mr. Lovatt, as Local Director, and especially because of his self-proclaimed interest in and devotion of time and effort to such matters, must bear personal responsibility for the deficiencies in the quality and quantity of the staff and of the statistical base relied on by him to support his request for change.

Mr. Lovatt said he devoted about ten per cent. of his time to meetings of the Board of Directors and of Committees of that Board. Again I would think that some other areas to which he devoted time would involve the function of the Board of Directors and its Committees.

In his report to the Board of Directors, under the heading "Board", Mr. Zwerver set forth his comment upon and recommendations in respect of the function and organization of the Board of Directors in relation to the operation of the Society. Some of his testimony upon the Inquiry was similarly directed.

There were two recommendations. One was that a "functioning" Executive Committee be established. The other was that an "active" Services Committee be established. His choice of adjectives is interesting. Those committees may have existed in

theory or on paper, but, in his view, they were not "functioning" or "active."

In his testimony Mr. Zwerver expressed his concern that the Board of Directors of the Society did not have a "functioning" Executive Committee as required by the legislation. I presume his reference was to sub-sections 7 and 8 of section 7 of The Child Welfare Act.

He said the absence of a functioning Services Committee was also a cause of concern to him.

He referred to the manual prepared in 1975 by the Ontario Association of Children's Aid Societies entitled "A Working Manual for Board Members of Children's Aid Societies". Based on a comment in that manual he expressed the opinion that any committee of the Board of Directors would have only an advisory function unless specific authority were delegated to it by the Board of Directors. I share his opinion.

In the case of the Society, the by-laws delegated specific authority to the Executive Committee, but to no other committee. Mr. Zwerver stated his opinion that a committee's function is to examine some aspect of a society's operation and, on the basis of the results of that examination, to advise the members of the society's staff in relation to what is within their ambit of operation and to advise the board of directors if the recommendation relates to the policy of the society or is otherwise beyond the ambit of the staff's authority.

Mr. Zwerver said that the absence of meetings of an Executive Committee and thus the lack of preparation for meetings of the Board of Directors contributed to long meetings of the Board of Directors of the Society and to a deficiency of focus in the agenda of such meetings.

He said his recommendation as to the Executive Committee was accepted and acted upon by the Board of Directors of the Society.

He said that similarly a services committee is an essential part of the operation of any

children's aid society. Its function is to keep the board of directors informed about service demands and generally to assist the board and the senior staff in relation to any problems surrounding the provision of the society's services.

In the case of the Society there was a Services Committee, but it met infrequently and its activities were not well focussed. Similarly, in Mr. Zwerver's opinion, members of the Board of Directors of the Society did not possess adequate knowledge of the services provided by the Society.

Again he said his recommendation as to the Services Committee was accepted and acted upon by the Board of Directors of the Society. That Committee was engaged in preparing the policy and practice manuals recommended by Mr. Zwerver. They also provided support to senior staff persons in their duties.

Thus, though Mr. Lovatt purported to devote time to the function of the Board of Directors and its committees, it is apparent that he did not achieve adequate results.

The evidence upon the Inquiry as to his communication to the Board of Directors with reference to Kim's case after it became a matter of public knowledge and the evidence as to his earlier decision not to communicate with the Board of Directors about the case combine to show an abysmal record of fulfillment of a local director's responsibilities and duties. I deal with this more fully elsewhere, but it must be borne in mind in relation to Mr. Lovatt's testimony as to his time spent on matters involving the Board of Directors and their reliance upon him as Local Director. He acknowledged that reliance.

Mr. Lovatt said that he spent about five per cent. of his time with attendance in court particularly in connection with one area of the Society's service. He said:

"My method had been to always retain some personal contact with the court, so that I knew what was going on in the system

between the Children's Aid Society and the court..."

That interest and desire by Mr. Lovatt was laudable. However again it was ineffective.

Kim's case by itself may not have been sufficient to support that comment by me, but Mr. Zwerver's testimony provides sufficient re-inforcement for my opinion.

Mr. Zwerver testified that when he first came to the Society he sat in court to observe most of the proceedings. He wanted to assess the level of the knowledge which the staff of the Society had in relation to court procedure and the presentation of evidence. He wanted also to have a basis for discussion with the provincial court judge then sitting in court.

He said that on the whole he was not satisfied with the manner in which the staff of the Society performed their duties in court. Especially when solicitors appeared to oppose the Society the Society sought adjournments because the staff was not prepared for the hearings and because essential evidence had not been prepared. In other instances assessments which had been ordered by the Judge were not prepared in time. In other cases there was confusion as to when matters should be brought to court; they were brought on much later than they should have been. In other cases information required by the court was presented late. Almost all of those comments can be made of the handling of Kim's case by the Society in court.

Mr. Zwerver did speak with His Honour Judge David F. Kent who had succeeded Judge Nighswander. He said that Judge Kent's

"comments to me certainly indicated that he felt that the lack of knowledge on the part of the staff was really quite abominable."

If Mr. Lovatt had been effective in his purported desire to know "what was going on in the system" between the Society and the court he would have been aware of Judge Kent's view. Judge Nighswander had not sat in the Court in Sarnia and

the County of Lambton since September, 1976, about eighteen months before Judge Kent expressed himself so bluntly to Mr. Zwerver.

Mr. Lovatt in his testimony said he spent about ten per cent. of his time on meetings with managerial staff, including the supervisors and the office manager. Whatever might have been done at such meetings might also have included matters which Mr. Lovatt placed in other categories in his estimate apportioning his time. The category of planning development of the society and use of personnel might be one such category. Consultative meetings with supervisors and other staff, including questions of case handling, might be another.

Despite all of such meetings and planning, all of the confused disarray noted by Mr. Zwerver and members of the Farina Committee was permitted to come about and to continue. It was another example of Mr. Lovatt's ineffectiveness.

The absence of adequate policies and procedures was noted by the Farina Committee and by Mr. Zwerver. The two documents presented by Mr. Lovatt to the Farina Committee and to Mr. Zwerver as the policies and practices of the Society are reproduced as Schedule 2-L and 2-M to this Report. Mr. Zwerver described the situation as "the almost total lack of up-to-date written policies and procedures." The members of the Farina Committee were similarly critical. The comments of Mr. Zwerver and of the Farina Committee are well-founded.

Mr. Lovatt, as Local Director, must bear the responsibility for the inadequate policies and procedures which did exist and for the absence of others.

Another example of Mr. Lovatt's lack of administrative skills is one which, if it were mentioned under less tragic circumstances, would have almost comic characteristics. Despite all of Mr. Lovatt's devotion of time to budget, finance, administration and management meetings, and despite the surplus of about \$12,000.00 at the end of 1977, the supplies of office materials for use by the Society's staff were completely inadequate when Mr. Zwerver arrived in March, 1978.

Mr. Zwerver described the situation and Mr. Lovatt's explanation as follows:

"Q. And I think you mentioned briefly yesterday that you found that there was a lack of office supplies in the Agency.

A. Yes, some office supplies.

Q. Would you like to be specific about that, please?

A. There was no writing equipment, such as pens and pencils; there was no writing pads, people were using the back of blank cheques to write memos to each other; no notebook paper was provided for staff to do case notes, they also had no binders to keep case notes in, and that was something that was expressed as a need and as a concern by the staff when we arrived, and we basically - what we did was we made sure that those supplies were available to staff because they're fairly basic.

Q. Yes. Why were the supplies not available, do you know?

A. Mr. Lovatt said that the Agency couldn't afford to buy them.

Q. From what you observed would that have been correct?

A. Well, the Society had a surplus of \$12,000 in 1977. I did note yesterday that we didn't think enough money had been allocated in the area of office supplies in the '78 submission. I felt that, you know, basic things as the ones I have described were important to the operation of the Society and certainly I would not have thought that the Ministry in looking at a budget would be particularly concerned about the \$200 involved in buying pens and paper.

Q. I would think not. As far as the surplus was concerned no matter in what

area the surplus had occurred could it not have been used in other areas where there perhaps wasn't enough money to go around?

A. Well, my understanding of the Ministry's budgetting procedure is that once they approve the budget, it's line by line approval but then it becomes a global budget and in fact the responsibility for the allocation of those funds is left to the discretion of the local Children's Aid Society so certainly in that sense those monies could have been used for other purposes.

Q. There was no reason at all why they couldn't have been used for office supplies?

A. I would think not."

Mr. Lovatt, as Local Director, must bear responsibility for that. His explanation that the Society could not afford such supplies does not merit comment beyond Mr. Zwerver's remarks which I set forth above. There simply was no reason for the lack of such supplies.

Another portion of Mr. Zwerver's report and testimony demonstrates further the ineffectiveness of so much of Mr. Lovatt's expenditure of time upon managerial and consultative and planning meetings.

Mr. Zwerver in his report noted the absence of structured case planning conferences except for discussions within the individual service units. He elaborated upon that when he testified upon the Inquiry. He said there were no structured case planning conferences held in the Society for the purpose of making certain basic decisions in cases. In his report he set forth seven stages or areas in respect of which case planning conferences should be held in all cases.

In testimony expressing views similar to those expressed by other well-qualified witnesses, he said that more than the individual worker engaged upon a case should be involved in making such decisions.

In his report and testimony he set forth recommendations for the establishment of a system of structured case planning conferences of appropriate members of the Society's staff and collateral persons to ensure proper planning of each case. He felt the Local Director and Supervisors were responsible for ensuring that such conferences were held.

Mr. Lovatt, as Local Director, must bear responsibility for the absence of such case conferences.

Kim's case certainly was an example of one in which decisions were not the result of any conference. Apart from the meetings of some of the staff in May, 1976 to determine when Mrs. Harvey's decision to return Kim would be implemented, there were no case conferences in respect of Kim. There was no planning for her case. Even the meetings in May, 1976 were not case planning conferences in any real sense. They were circumscribed by Mrs. Harvey's prior decision that Kim would be returned to her home and by the limited number of persons who attended, some of whom felt further inhibited by the accepted dominant position of Mrs. Harvey and the Family Services Department within the Society.

Mr. Zwerver said there was a need to make such conferences a part of a formally endorsed administrative procedure within the Society.

Mr. Lovatt must bear responsibility for the absence of any such requirement during Kim's lifetime.

In his report Mr. Zwerver made no reference to Kim's case, but he did include a portion entitled "The Investigation of Reports of Child Abuse or Neglect." In his testimony he said that portion was based on discussions he had with members of the staff of the Society. The discussions were about the practices and procedures in such matters, including referrals from other organizations in the community.

In his report he outlined the requirements of The Child Welfare Act and the Regulations made thereunder. He mentioned specifically the requirement under section 41 of that Act that certain

information about children be reported to a children's aid society or Crown attorney. He spoke of the further obligation imposed upon the children's aid society receiving any such report to record it and to investigate it and to determine if the child mentioned in it is a child in need of protection. He also mentioned directives from the Child Welfare Branch of the Ministry reminding children's aid society personnel that a children's aid society cannot delegate its responsibilities to others and that its personnel must co-ordinate any plan for the treatment of any case of confirmed or suspected child abuse.

In his report was a short paragraph which must have disturbed those who read it in April, 1978. He wrote:

"There have been cases noted in this Society where neglect and abuse have been reported or alleged and which were not investigated by CAS, or appear to have gone uninvestigated for long periods of time."

It would seem that, but for some fortunate circumstances, some of those cases might have had the same tragic conclusion as Kim's case.

That paragraph was followed by his six recommendations with reference to the management of reports and cases of child abuse.

In his testimony he said that in March, 1978 there were not in the Society any written established procedures to be followed in respect of such reports and cases. Kim's experience demonstrates that that same situation prevailed during her lifetime.

Mr. Zwerver said it was important to have such procedures reduced to writing. For them to be merely "understood" was not sufficient. Mrs. Harvey, in her testimony, while not addressing this aspect in particular, had suggested there was no need for written procedures because the staff of the Society were aware of what was required.

On the basis of the testimony as to the errors made in Kim's case as early as June 17, 1975 and Mr. Zwerver's testimony and that of the members

of the Farina Committee, all as to their observations as to the adequacy of the Society, I am satisfied completely that Mr. Zwerver's view is correct and that Mrs. Harvey was in error.

I am satisfied that the absence or lack of appropriate policies and procedures was the result of Mr. Lovatt's inability or unwillingness to perform properly some very important parts of his duties as Local Director of the Society.

In Kim's case either the staff of the Society did not "understand" what was to be done in such a case or, if they did "understand" they did not do it. As Local Director, Mr. Lovatt was responsible in either instance.

Mr. Zwerver felt that it was important to have written material available for reference, especially in times of stress. He, and others too in their testimony, emphasized the stressful situations which arise in cases of child abuse.

He went on to say in his testimony that, by having the procedures in written form, the Society and its staff would achieve greater consistency in the management of such cases, in all of their various phases and aspects. He cited a number of areas that might raise questions in individual cases. They included acquisition and use of medical information, arrangements for medical examinations, involvement of parents, involvement of police, apprehension, use of non-ward agreements, applications to court, involvement of other persons or organizations in investigation or in treatment and preparation of documents, including reports.

Mr. Zwerver said that, while there were "pockets of knowledge" of appropriate procedures within the Society, he found, generally "a lack of understanding about how to handle child abuse cases."

He said that, after initial discussions with the staff of the Society, he was disturbed by the responses he received. He asked all members of the staff, who had been involved in any case in the Society in which child abuse had been a component, to furnish to him the basic information about those cases. He was interested in knowing whether each

case had come initially to the Society as an allegation of abuse or serious neglect or whether abuse had been mentioned after the case was opened or whether abuse allegedly occurred while the child was in the care of the Society.

At another point in his testimony, while being examined with reference to the state of the files maintained by the Society, Mr. Zwerver expressed concern that there might have been other cases of child abuse in which the Society was not actively involved. The concluding sentence of the particular comment by Mr. Zwerver was:

"The question was put to me by the Board of Directors in fact as to whether situations similar to the Kim Anne Popen case could occur, and at that point in time it being only about three weeks into my being there, I certainly could not guarantee them that it could not occur not having total knowledge of all of the cases obviously at that time."

In other areas of his testimony Mr. Zwerver referred to incidents which were mentioned to him during meetings or conversations with persons outside the Society. He mentioned specifically a meeting with the child abuse committee which was established with orientation about Sarnia General Hospital. The particular comment by Mr. Zwerver in his testimony was:

"One of the things that I found interesting, and subsequently disturbing, was that the role of the Children's Aid Society was not spelled out in the written procedures that were being put forward by the hospital, and I raised that concern in the Child Abuse Committee meeting. There was great hesitancy to respond to my concern. What subsequently came out of our conversations were really several people in that room saying that the reason why it was not spelled out was because they did not feel that they could trust the Children's Aid Society to carry out their responsibilities, and that they wanted to use intermediaries to make sure that at least

their responsibilities were being adequately carried out, and that they would then inform the Children's Aid Society of their actions. This comment was made by one of the medical people there and was also made by the representative of the Police Department who sits on that Committee. There was a great deal of anger expressed about what the Children's Aid did or did not do in cases where they felt they had referred a matter of alleged or actual child abuse."

In a subsequent response he tempered that comment to say that "anger" might not have been an appropriate word, but that certainly frustration was expressed. He said one person did say he was angry because of the reluctance of the Society to become involved in some cases in which he felt it was important that the Society be involved.

Mr. Zwerver spoke of one incident mentioned by a person at the meeting of the child abuse committee. It was stated that during the night a child was admitted to hospital, the police were involved and a telephone call was placed to the Society. It was alleged that the Society's worker responded to that call to say, during the telephone conversation, that there was no need for him to go over then and he would meet the others in the morning. The feeling of the others then was that that was not an appropriate response. Mr. Zwerver shared that opinion and spoke to the particular member of the Society's staff who had made that response and who then acknowledged to Mr. Zwerver that it was an error in judgement.

As Local Director Mr. Lovatt must bear the ultimate responsibility for all of that.

In any event Mr. Zwerver made several recommendations which are set out in his report. He then prepared a written statement of procedures which incorporated those recommendations. That statement was intended to be an interim document and it was later amended.

Mr. Zwerver's first recommendation was that all reports of alleged child abuse must be investigated immediately. The investigation must be

by the Society which could not delegate any of its authority or responsibility to investigate to anyone other than the police. If another organization in the community had referred the matter to the Society, the Society might ask that organization to be involved with the Society, but the Society would retain a position of dominant authority and responsibility.

Mr. Zwerver emphasized that the Society bore the responsibility to act upon and to investigate every report to it of a possible or alleged incident of child abuse.

He said that he became aware of cases wherein, because of the provisions of section 41 of The Child Welfare Act, another organization had reported to the Society concern about physical injury to children, but, at the same time, had requested the Society not to investigate because the other organization had not yet completed its own investigation.

In his opinion it was not an acceptable practice for the Society to withhold its own investigation in such circumstances and for such reasons. He so advised the staff of the Society. The Society bore the responsibility to investigate, but might consult with the other organization to decide upon the method of investigation.

I infer from Mr. Zwerver's testimony that, prior to March, 1978, the Society or some members of its staff had acceded to such requests to withhold or delay investigation following reports to the Society of instances of suspected child abuse. Mr. Lovatt, as Local Director, was responsible for any such unacceptable practice which, I am satisfied, amounted to dereliction of the Society's statutory responsibilities.

Mr. Zwerver's second recommendation in this area was that the Society arrange for the immediate medical examination of any child mentioned in any report to the Society if the child was physically injured. In his view that was one of the Society's responsibilities.

He said in his testimony that in some instances members of the staff of the Society made judgements as to the severity of the child's

injuries. I infer that such decisions were made without referral to a medical doctor and without medical examination. He said that in other instances the Society's staff "delegated the responsibility" for medical examination of the child to the child's parents or to another organization. I share the view, implicit in his comment, that such practices are inappropriate and do not fulfill the responsibilities placed upon the Society.

The next recommendation in this portion of Mr. Zwerver's report was that the police were to be advised of all cases of alleged sexual abuse and of cases of obvious injuries to children.

Mr. Zwerver's next recommendation was based on practices suggested by the Ministry. It was that in any case in which a child appeared to have been abused, the child should be apprehended by the Society and the case should then be heard in court. The child should not be admitted to the Society's care by means of a non-ward agreement. Mr. Zwerver was aware of at least one instance, in addition to Kim's, in which a child was obviously abused, but was taken into care pursuant to an agreement with the parents.

His next recommendation was that no child, who was in the care of the Society because of actual or suspected abuse, should be discharged from the Society's care without an appropriate case planning conference. He said that when he assumed his duties no specific procedures had been established for the convening of conferences to make decisions with respect to admission to or, especially, discharge from the care of the Society. Such decisions in the Society tended to be made by an individual member of the staff of the Society, perhaps in consultation with his or her immediate superior.

It would seem that even in March, 1978 the Society had not learned that lesson from the tragedy of its mismanagement of Kim's case.

Mr. Lovatt, as Local Director bears responsibility for that.

In Mr. Zwerver's opinion other persons should have been involved in such decisions as to the

care of children by the Society. He suggested that in some cases the foster care worker and the Supervisor of that area of work should be involved. In some cases persons working with the families as representatives of other bodies in the community, such as public health nurses and teachers, might be involved in such decisions. These others would assist not only in the immediate decision, but also in forming a basis for case planning required after the child's discharge. Such planning might include consideration of levels and frequency of supervision, use of medical resources and use of other facilities and resources in the community.

The final recommendation in this portion of Mr. Zwerver's report in a sense flowed naturally from the others. It was that the Society prepare immediately a procedure to deal with cases of child abuse and to involve other community resources therein. Models for such a procedure were available.

Mr. Zwerver said that that recommendation had been acted upon. In his opinion the child abuse committee which was established in the County of Lambton could and should be involved in the decisions and planning he mentioned in this portion of his testimony.

Mr. Lovatt in his testimony had said that he spent about five per cent. of his time upon "community work done during working hours." From Mr. Zwerver's testimony it would seem that Mr. Lovatt's efforts at community work were another instance of lack of positive effectiveness. Other persons in the community were angry or frustrated because of the Society's actions or failures to act. There was no testimony that Mr. Lovatt was aware of that anger or frustration. There was no testimony to indicate that he did anything to correct the problems of the relationships between the Society and others. By dealing directly with some matters as he did during the typical day he described he gave validity to the complaints of others and so aggravated the problem.

Mr. Lovatt, as Local Director, is responsible for the deficiencies in these areas. He should have been aware of them either from within the Society or from the community beyond the Society. He did nothing to correct them. Either he was unaware

of the deficiencies or he was unable or unwilling to correct them. In either case it would seem that this was yet another example of his lack of competence to be the Local Director of the Society.

None of the testimony upon the Inquiry led me to believe that any time devoted by Mr. Lovatt to any category of his duties was any more effectively applied than those I have examined so far in this Chapter.

On all of the testimony I am satisfied that in the early months of 1978, as well as during Kim's lifetime, the general administration and operation of the Society were not satisfactory. In my view they were deplorable.

Mr. Lovatt, at all times material to that observation, was the Local Director and had been so for several years. Therefore, he must bear the responsibility for the existence and continuance of such a condition.

That he was a person of good character and good intentions does not diminish his liability.

That he spent time and effort upon the affairs of the Society does not diminish his liability.

All of what I have written heretofore in this Chapter is of general application to Mr. Lovatt's position within the Society and his performance of the duties of that office. Fleeting reference has been made to Kim's case when the particular area being discussed seemed to have some special bearing upon it.

I now move to an examination of the impact of Mr. Lovatt's shortcomings upon Kim's case and specific instances of his shortcomings as demonstrated by the testimony relating directly to it.

Only in September, 1975 did Mr. Lovatt learn of the Society's involvement in Kim's life.

Police Constable Gander had visited the Society's offices on June 17, 1975 and reported the

general tenor of the telephone call to the police on June 16, 1975.

I am satisfied that that report by Police Constable Gander then imposed upon the Society the responsibility to act and to investigate the matter immediately. That would involve investigation of the earlier instances of alleged injury to or medical treatment of Kim.

I am satisfied that the Society did make an initial response immediately, on June 17, 1975, but more was required. The personnel of the Society recognized that. However nothing more was done after June 17, 1975 until August 31, 1975 when another quite separate incident again brought Kim to the attention of the Society.

In my view the unsatisfactory administration and organization of the Society, including particularly the absence of clearly defined and enunciated practices and procedures, permitted the failure of the Society to act upon and to investigate in any way Kim's case between June 17, 1975 and August 31, 1975.

Mr. Lovatt, as Local Director of the Society, was responsible for the unsatisfactory administration and organization of the Society. Thus, with other members of the staff of the Society, he was responsible for the failure of the Society to act upon and to investigate Kim's case appropriately between June 17, 1975 and August 31, 1975.

In a sense, from June 17, 1975 to August 31, 1975, Mr. Lovatt was a victim of his own shortcomings. He sheltered in his office, he allowed Mrs. Harvey free rein and he permitted the unsatisfactory state of the Society to exist. That state was such that a case, unusual to the Society because it was one of alleged or suspected abuse and because it was, even on June 17, 1975, recognized as one of some complexity and severity, could lie unnoticed and unattended for two and one half months. For all practical purposes the only record of Kim's case within the Society was in the minds of some of the staff. The location of any writing about it was unknown. Even in 1978 the witnesses could do no more

than guess as to where the writing prepared on June 17, 1975 had lain until September 2, 1975.

When events external to the Society again brought Kim to the attention of the Society on August 31, 1975, Mr. Lovatt was soon made aware of the more recent events.

His testimony was such that it leads me to believe that the case came to his attention only because it was going to involve an application to court. He did not indicate that he then was informed of the events of June 17, 1975 and the inexplicable absence of any further activity by the Society until August 31, 1975.

On September 8, 1975 he appeared in the Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter usually called the "Court", on behalf of the Society to request an adjournment of the hearing of the Society's application for an order under The Child Welfare Act in respect of Kim.

The extent of Mr. Lovatt's knowledge of the case is not apparent from the transcript of the proceedings in the Court that day. He did say that the Society would eventually seek an order making Kim a ward of the Society for a period of six months.

In his testimony upon the Inquiry he said that throughout the fall of 1975 Mrs. Harvey kept him "aware in general of what was happening in this case." When asked if he read the file or relied on oral reports from Mrs. Harvey he replied:

"The reports would be mostly from the Supervisor."

The frankness or accuracy of that response must be questioned. When one looks at the recording in the file of the Family Services Department of the Society it is clear that anything which happened after August 31, 1975 was not recorded until Mr. Carter made his one and only recording at the end of February, 1976. So really, through all of that time, there was nothing new recorded in that file. There were, during that period, several entries in the

recording in the file of the Children's Services Department of the Society.

One must also wonder as to Mr. Lovatt's comprehension of what was involved in the case and, particularly, the charge against Kim's parents under section 40 of The Child Welfare Act. In his testimony he said:

"...my understanding was that it was the father [Annals Popen] that was found guilty of damaging this child [Kim]."

He added that he was shocked by that finding because he:

"...had kind of felt all along that any damage here might have been the result of the mother [Jennifer Popen]."

He acknowledged that that latter was really based on intuition

"because at that time we did not know too much about the background of this girl [Jennifer Popen]."

That is a frank admission that, until after the hearing of the charge against Kim's parents and the hearing of the Society's application for wardship, the Society still lacked information which, I am satisfied, should have been sought in June, 1975 and again in September, 1975 and the succeeding months.

Mr. Lovatt must bear responsibility for its not having been sought. At least in February, 1976 he knew the Society did not have that information. There is no testimony to indicate that even then he exercised his authority and ordered Mrs. Harvey or anyone else to conduct the necessary investigation to obtain the necessary information.

Mr. Lovatt did not fulfill the duties of his office.

A further indication of Mr. Lovatt's inadequate comprehension of the case was his testimony that, in discussions with Mrs. Harvey after the Court's decision, it was decided that the Society

would place its emphasis on Jennifer Popen rather than on Annals Popen "although the Court order had required us [the Society] to monitor the father's [Annals Popen] behaviour" with Alcoholics Anonymous and other agencies.

His phraseology indicates that that discussion may have occurred after Annals Popen was sentenced on March 29, 1976. The judgement given by Judge Nighswander on February 25, 1976 placed Kim in the care of the Society and the reasons for judgement contained the following:

"I am definitely going to note that he must give evidence that he has done something [about his alcohol problem] and that it is succeeding, before the Court will permit the child to return to its parents."

A transcript of the proceedings when Annals Popen was sentenced on March 29, 1976 was not available, but the probation order then made required him to abstain from drinking alcoholic beverages and to take treatment for his alcoholism.

He then went on to say that Mrs. Harvey assured him that Jennifer Popen would be "monitored." He said that from then on "in a general fashion" he followed Kim's case "all the way through."

A further indication of Mr. Lovatt's lack of comprehension of what was involved in Kim's case was his testimony as to his belief that the Society was placed in a difficult position by the disposition of the charge against Jennifer Popen and Annals Popen. He said that, while Annals Popen's plea of guilty did not fool the Society, the situation was that if Annals Popen complied with the terms of the probation order the Society would have no basis to oppose any application for the return of Kim to her parents.

In the light of some of his other evidence that was an entirely hypothetical difficulty. He said that he understood that Jennifer Popen's behaviour too was improving greatly. That was based on reports to him of Jennifer Popen's and Annals Popen's attendance at the Parent Effectiveness

Training Course and of Mrs. Lo's visits to them and of their improved "marital situation".

Mr. Lovatt was another who was misled, perhaps by himself, as to the value of the Parent Effectiveness Training Course, the adequacy of Mrs. Harvey's supervision of Mrs. Lo and the sufficiency of Mrs. Lo's efforts.

Mr. Lovatt was aware that Jennifer Popen had "consulted" Dr. Curtin prior to imposition of sentence upon Annals Popen on March 29, 1976. He testified as follows:

"The psychiatric report was, to my memory, was very bland, it didn't say that there was any great problem with this woman, it said that she was a poor communicator, that she had a poor background, it didn't detail the background, and it said that he couldn't make an opinion."

Mr. Lovatt was not specific as to what report he meant. The language he used leads me to believe he meant Dr. Curtin's report of March 19, 1976, supplemented by his earlier consultation note to Dr. Gamula following an interview with Jennifer Popen on October 22, 1975. I have discussed that report and note in Chapter IX. It certainly was not a positive statement in respect of Jennifer Popen. It expressed Dr. Curtin's inability to do more because of her unreliability. It would seem to me that Mr. Lovatt did not understand Dr. Curtin's report if he truly believed that Jennifer Popen's unreliability was not "any great problem" in the circumstances surrounding Kim.

There was no testimony that Mr. Lovatt, even when faced with the concerns expressed by Dr. Curtin in those documents and his statement of inability to do more without information from other sources or by other means, took any steps to ensure that efforts were made to pursue the matter.

It was another instance of Mr. Lovatt's failure to assert himself and his position. He failed the Society, himself as Local Director and Kim.

Mr. Lovatt denied that he participated in the decision to return Kim to her parent's home. His responses in this area of his testimony were to the effect that, even as he testified in August, 1978, he was not quite aware of when the decision to return Kim was made.

In my opinion he was refusing to recognize the weight of the evidence that, for all intents and purposes, Mrs. Harvey had made that decision by February 25, 1976 and perhaps even earlier. He did say that the Society's approach to Kim's case after the court hearing in February, 1976 was directed towards Kim's return. He said that was:

"...because of the circumstances that we saw at that time, that there was cooperation from both parents and that the reports from the case worker to the supervisor were favourable."

It seems to me that he permitted himself to be deluded by Mrs. Harvey or by himself.

He said his opinion as to whether or not Kim should be returned was not sought and he did not question the decision.

He said he had understood there had been a conference to decide when Kim would be returned. I have already expressed my opinion of that so-called "conference." It was merely a meeting of Mrs. Kirby and Mrs. Lo. It certainly was not a conference in any meaningful sense or in the sense in which Mr. Zwerver and other well qualified witnesses used the term. By reason of the unusual relationship between the two departments of the Society, no one really questioned or disputed Mrs. Harvey's basic decision that Kim would be returned to her home.

Mr. Lovatt testified that Mrs. Harvey kept him apprised of her ongoing supervision of Kim's case after Kim was returned. In June and July, 1976 he was told by Mrs. Harvey that, while there were problems at the beginning, the marriage appeared to be on a firm basis and Kim was settling into the home fairly well.

Mrs. Harvey telephoned Mr. Lovatt at his home on August 12, 1976 to advise him that Kim had died "because of a fall off the porch." He treated the incident as an accident and raised no question about it. He said that at that time he did not suspect Jennifer Popen "was likely to do any positive damage" to Kim.

I am uncertain of the sense in which he used the adjective "positive", but I feel he used it as a synonym for "intentional" or "deliberate" or "demonstrable."

He said he was convinced in his own mind at that time that Kim had not been in danger of abuse by her parents and that he was also then satisfied with the way in which the Society was handling Kim's case.

That latter statement cannot be reconciled with some of his responses when asked to comment upon some of the contents of a statement given by Mr. Heath to the Inquiry's Investigators.

Mr. Heath had said, in that statement, that in June, 1975 Kim's file was apparently mislaid or for some other reason her case was not assigned to a worker. Mr. Lovatt agreed that was not satisfactory.

Mr. Heath had said that in June, 1975 the Society was informed that during the previous six weeks Kim was apparently abused on two occasions, but the Society made no attempt to confirm the information with the hospital or family doctor.

Mr. Lovatt agreed that was not appropriate, but claimed he was not aware that the Society had not made that effort.

That latter is hardly worthy of one who said he had been kept generally aware of the case and who, as Local Director, had ultimate responsibility for its proper handling by the Society.

Mr. Heath had commented upon the apparent difference between the Society's records and those of the Sarnia Police Force with reference to contacts between the Society and the police shortly after June

17, 1975. Mr. Lovatt acknowledged that the Society appeared to have left investigation of the matter entirely to the police. He acknowledged that the Society should not have assigned responsibility to the police, but should have invited the police to join in the Society's investigation.

But, in almost the same breath, Mr. Lovatt complained about the failure of the police to investigate the allegation of two prior incidents of abuse. He said that, as a result of that alleged failure by the police, the Society had nothing to work on. He agreed it was incumbent upon the Society to request the co-operation of the police in the investigation.

All of that presents to me a sense of confusion and uncertainty in Mr. Lovatt's approach to Kim's case and relationships with the police. The latter part at least was an inappropriate attempt to deflect towards the police criticism which can properly be made of him and of the Society.

In the same area, perhaps in seeking to defend that apparent confusion and uncertainty, he said:

"...[Kim's] was the first really serious possible abuse case that I can remember our Society having. We had nothing to go on from the past."

That statement then leads back to the absence of practices and procedures to meet various situations as they arise so that workers are not then floundering when dealing with a matter under emergency or stressful conditions and without precedence in their personal experience as social workers.

Mr. Lovatt's claim of having nothing to go on from the past is perhaps defensible if limited only to the experience of persons dealing with cases of abuse of children in Sarnia and the County of Lambton. As I have noted elsewhere in the Report there was, even in 1975, an abundance of material available to the Society to assist its workers in handling cases of child abuse. It was Mr. Lovatt's duty to ensure that the personnel of the Society made appropriate use of such material. There was no

indication from any testimony that anyone on the Society's staff did more than rely on his or her own knowledge and experiences in any dealing with or on behalf of Kim. On the basis of the testimony of Mr. Zwerver and others that knowledge and experience was an insufficient base for reliance.

While there was an abundance of helpful material available to the Society in 1975, I recognize that the amount of such material has been increased substantially in the succeeding years.

Mr. Lovatt expressed the opinion that Mrs. Harvey and he, as well as other experienced employees of the Society, were qualified to manage Kim's case.

The testimony shows that Mr. Lovatt took no direct and continuing interest in Kim's case. That was so despite his comment that it was "the first really serious possible abuse case" in the Society and thus was without precedent as it were.

Mr. Carter was an experienced worker who may have been among those whom Mr. Lovatt felt possessed sufficient qualifications. But Mr. Carter was removed by Mrs. Harvey and replaced by Mrs. Lo. Mrs. Lo certainly was not experienced or qualified.

Effectively, management of Kim's case was left to Mrs. Harvey. Mr. Lovatt knew it and accepted it. He also knew and accepted Mrs. Lo's involvement.

Mr. Lovatt acknowledged that, in early 1976, he was not aware of Mr. Carter's concerns about the case as recorded in the files of the Family Services Department. Nor was he then aware of the concerns expressed by Mrs. Kirby, Police Constable Wyville and Mr. Carter to Mrs. Harvey in February, 1976.

That is a further demonstration of Mr. Lovatt's failure to concern himself sufficiently with Kim's case. He did not even read the recording. He relied entirely upon Mrs. Harvey's oral reports which, it would seem, were not complete. He made no other inquiries.

In my view, on the testimony of qualified witnesses, Mr. Lovatt, as the Local Director of the

Society, was required to supervise Mrs. Harvey who, in turn, was required to supervise Mr. Carter or Mrs. Lo and any other subordinate worker engaged in any way in relation to Kim.

From the testimony of Mr. Lovatt and Mrs. Harvey it would seem that Mr. Lovatt's supervision of Mrs. Harvey's performance of her duties in respect of Kim's case was confined to his unquestioning acceptance of her oral reports. He seems simply and totally to have deferred to Mrs. Harvey. He did not question anything. He made no suggestions. All of that was so, even though Kim's case was recognized by him as being an unusual case for the Society and as being its most serious then-current case. He merely required Mrs. Harvey to supervise Mrs. Lo closely.

At the same time he knew that the Society did not have any established policy or procedures for the handling of cases of child abuse. Nonetheless, as the Local Director of the Society, he should have been aware that cases of child abuse require careful and particular handling in all stages, from the investigation of the initial report to the termination of the case.

While the Society had not prepared its own guidelines for the handling of cases of child abuse there was, even in 1975 and prior years, an abundance of material in the literature and other resources. Perhaps one might be too critical to say that Mr. Lovatt was to be criticized for failure to develop such guidelines. But it is not too harsh to say that, even without anything written within the Society, he should have been aware of the need for care in the handling of child abuse cases. The guidelines for the management of such cases published by the Ontario Association of Children's Aid Societies in July, 1976 emphasize the need for careful management, consultation of all persons and organizations involved in the case, and planning. The same publication contains a lengthy bibliography and list of other materials. Much of what was contained therein was available prior to 1975.

In my view Mr. Lovatt should have been more energetic in the performance of his duty to supervise Mrs. Harvey. He should have asked questions designed to ascertain whether appropriate plans for the

management of Kim's case were being formulated in September, 1975 and subsequently. He did not ask such questions.

One can only speculate as to the response that would have been made to any such question. Nothing upon the Inquiry satisfies me that there was any plan for Kim beyond the decision to take her into care on August 31, 1975 and the decision, in or before February, 1976 to return her to her parents.

Mr. Lovatt should have asked what goals were established in any such plan. He did not. Again there is nothing to indicate that any goals were set.

Mr. Lovatt was content to understand that a conference had been held to decide when Kim would be returned. He was not aware of when it was decided that Kim should be returned. Even understanding that there had been a conference as to when she would be returned he should have asked about the decision that it was appropriate that she be returned. He might appropriately have asked "What procedure led to that decision? Who made the decision and when? Who assisted in making the decision? What information was relied upon to support the decision?" He did not ask any such question.

Mr. Lovatt should have asked similar questions about the decision as to when Kim should be returned. Who was present at the conference? What was the rationale of the decision? What factors were considered? He did not ask any such question.

Apart from asking questions of Mrs. Harvey, Mr. Lovatt should have been making suggestions to her.

He said he had recognized the inconclusive results of Dr. Curtin's interviews with Annals Popen and Jennifer Popen. He should have made suggestions as to actions that might have been taken to resolve some of the uncertainty. Dr. Curtin, in his report, had made some suggestions as to other observations and tests which might have been helpful. Mr. Lovatt did not make any such suggestion.

He was aware that Jennifer Popen was pregnant in 1976. He should have been aware that the birth of the expected child might have some effect upon Jennifer Popen and her ability to cope with Kim's return. He should have suggested to Mrs. Harvey that consideration be given to that factor, particularly the possibility of post-partum depression. He did not make any such suggestion.

Probably the list of questions that Mr. Lovatt should have asked, but did not, and of suggestions he should have made, but did not, could be considerably extended. The testimony of expert witnesses upon the Inquiry emphasized the complexities and subtleties of child abuse cases and the many variable factors that may be encountered in any individual case. Mr. Lovatt, as Local Director of the Society, should have had some general knowledge of all of this and should have done more than passively accept Mrs. Harvey's reports and decisions and her actions.

Mr. Lovatt was in error in his comprehension of the significance of the results of the prosecution of Annals Popen and Jennifer Popen upon the charge of failing to protect Kim. There was no testimony to establish that he was aware of the discussions between Mr. Lang and Mr. Higgins which led to those results. But nonetheless, despite those results, he should have known that the order placing Kim in the care of the Society was the result of a procedure entirely separate from the prosecution of Kim's parents.

Mr. Lovatt felt that the decisions of the Court required or enabled supervision only of Annals Popen. That may have been so insofar as the Probation Services were concerned. So far as the Society was concerned, Kim was placed in its care and it was responsible for all factors affecting her well-being. If there was any doubt as to the powers of the Society to be concerned with Jennifer Popen, whether as to her behaviour, health, either physical, mental or emotional, or as to any other aspect of her life, the Society could have returned to the Court to seek clarification of the matter and any other order which the Society might have felt was necessary to enable it to perform its statutory duty.

Mr. Zwerver had noted that the personnel of the Society generally had an unsatisfactory level of knowledge and understanding of the appropriate legislation and regulations and of court procedures and functions. It would seem that Mr. Lovatt's knowledge and understanding of those matters was subject to the same observation. As Local Director of the Society he had a duty to the Society, its staff and the children and families it served. That duty was to be knowledgeable in those areas. He failed in that duty.

In February, 1976, after the hearing and determination of the Society's application whereby Kim was made a ward of the Society for a period of six months, Mrs. Harvey removed Mr. Carter from the case. She appointed Mrs. Lo in his stead.

Mr. Lovatt was aware of that action by Mrs. Harvey. He accepted it as a *fait accompli*. He was not consulted about it. He asked no questions about it and he made no comment or suggestions about it other than to require Mrs. Harvey to provide close supervision of Mrs. Lo's activities on the case.

Mr. Lovatt must have had some concern as to Mrs. Lo's ability to provide an adequate level of service to such a serious case. While he had not participated directly in the process whereby she was employed by the Society just a few weeks earlier, he should have been aware of her lack of training and experience.

Mr. Lovatt testified that, while it had not been reduced to writing, there was an established procedure within the Society which was to be followed in the event a case were to be transferred from one worker to another. That procedure, as he described it, involved a conference of at least the two workers directly involved, the worker being relieved and the worker appointed in his or her stead, together with their Supervisor. Then the worker being relieved would introduce the new worker to the family being served in the case. He said that would involve also a discussion of the goals which the Society hoped to achieve.

If there were such an established procedure it was not followed in Kim's case. There was no

conference of the two workers, Mr. Carter and Mrs. Lo, and the Supervisor, Mrs. Harvey. There was no introduction of Mrs. Lo to Annals Popen and Jennifer Popen by Mr. Carter. There was no discussion of goals to be achieved.

Mr. Lovatt acknowledged that Mr. Heath's comment, that there was no conference or review of Kim's case at the time Mr. Carter was relieved and Mrs. Lo was appointed, disclosed a failure by the Society. He accepted it as a correct statement.

He went on to say:

"What I'm not aware of is the kind of pressures under which this was made at the time, why it was done quickly."

I infer from his choice of tense that he lacked that awareness even as he testified in 1978. If that be so I am unable to understand why by then, about eight months after the case became a matter of public interest and concern, he had not made himself aware.

Even if I be in error in that inference, he certainly meant that, when he was advised by Mrs. Harvey of her appointment of Mrs. Lo to replace Mr. Carter, he was not aware of the "pressures" and of the reasons for haste.

The obvious comment upon that is that Mr. Lovatt should have inquired. He did not. It was another example of his incompetence or lack of interest.

Mr. Lovatt did testify that he had been told that the relationship between Mr. Carter and Jennifer Popen had become "unworkable." He said he was told that the case would require a lot of time and attention, but it could develop well if given proper attention.

As he continued his response, he, perhaps unwittingly, condemned himself in another area upon which I have commented, namely the qualifications of the staff of the Society. He, as Local Director, was responsible for the employment of staff and for

ensuring the adequacy of their knowledge and expertise. In any event he made the rather extreme statement,

"We had no highly qualified workers on staff at that time."

That appears to be an unnecessarily harsh assessment of the entire staff of the Society. But, if it was justified, he must bear the responsibility for the existence of the condition. And if the conditions existed all the more was it incumbent upon him to take a particularly close and detailed interest in Kim's case.

In my view his criticism of the staff of the Society was really a condemnation of himself for permitting an unsatisfactory situation to exist and for failing to take appropriate steps to protect Kim from the harm that might flow from that unsatisfactory condition.

He then went on to say that Mrs. Lo, a new employee, was the only long-term worker who then had a light case load and thus the time to take on the case. He said that Mrs. Harvey accepted his requirement that she "very closely" supervise Mrs. Lo.

He did not indicate that he had considered any possible alternatives to the transfer of Kim's case to Mrs. Lo or that there had been any discussion about such alternatives. There was no conference even between Mr. Lovatt and Mrs. Harvey in relation to the transfer. Mrs. Harvey made the transfer. Mr. Lovatt accepted it, almost unquestioningly.

Mr. Lovatt was asked about Mr. Heath's suggestion that some "danger signals" in Kim's case were not recognized. One such item mentioned by Mr. Heath related to Jennifer Popen's "tragic childhood."

Again, in purporting to defend the Society's actions, and thus himself, with reference to that item, Mr. Lovatt said:

"Mrs. Popen's admission of her own tragic childhood, we had very little information as to what this actually was at that time, and we were not aware of how much of it was truth and how much was not."

He added that it had not come to his mind to inquire further into that area. He acknowledged that there should have been such further inquiry. By that testimony he had again demonstrated his own inadequacies and failures as well as those of the Society.

As he continued in this area he acknowledged that he had relied then upon Mrs. Harvey's interpretation of Dr. Curtin's report and consultation note attached to the pre-sentence report upon Annals Popen prepared in March, 1976. He did not see the report until later.

In all of this Mr. Lovatt sought refuge in the statement that the situation was uncertain and "so muddy." He said investigation by the police might have cleared the situation. He said there were two or three unproven allegations and only the one proven, that latter being against Annals Popen.

That is not a tenable position. I have commented upon the role of the Sarnia Police Force in Chapter XIX of this Report. Whatever shortcomings there may have been in the performance of the police function the Society was primarily responsible for the investigation of all reports of real or suspected abuse of children. That was a part of the duty imposed upon all children's aid societies. All of the expert testimony upon the Inquiry emphasized that the Society had that duty and should have fulfilled it. The police function was over and beyond the Society's function and did not relieve the Society of its responsibilities.

Mr. Lovatt appeared to be sincere in expressing that position. It is but another example of his lack of qualification to be the local director of a children's aid society such as the Society.

Mr. Lovatt described as an "oversight" the failure of the Society to arrange for Kim to be medically examined after her return home in May, 1976. In my opinion it was an oversight of great importance. Medical examinations in June, July and August, 1976 may very well have disclosed the onset of the abuse and injuries which eventually caused Kim's death. The realization that the Society intended to have Kim examined might very well have prevented any injury in that that realization might

have in itself inhibited anyone who might otherwise have injured Kim.

Mr. Lovatt bears some responsibility for the "oversight." Had he been properly performing his duty to supervise Mrs. Harvey he should have inquired about medical examinations. He made no such inquiry. That failure is in keeping with so many of his other failures.

Mr. Lovatt acknowledged that the Society failed to maintain an appropriate liaison with the Probation Service. His defence of that failure by the Society was that in 1976 the arrangements among the various agencies and organizations in the County of Lambton was informal. Mr. Lovatt by failing to ask questions of Mrs. Harvey contributed to this failure by the Society. Any supposed informality is no defence to that criticism. In any event Mr. Lovatt, as Local Director of the Society, contributed to any such informality.

The same sort of situation prevailed in connection with contact between the Society and The Lambton Health Unit. Again and for the same reasons Mr. Lovatt shares responsibility for the failure of the Society in that relationship.

Despite all of those admissions Mr. Lovatt was able to make a surprising response when asked to comment upon Mr. Heath's statement expressing doubt that the Society's supervision of Kim's care was sufficiently adequate. Mr. Lovatt said he did not agree with Mr. Heath's statement. He said he felt at the time that the supervision was adequate. That he was able to have that feeling demonstrates his willingness to form opinions on important matters without sufficient information and without any question or effort to supplement such information.

That a case such as Kim's could be handled as it was by the Society without Mr. Lovatt knowing how deficient was that handling is an illustration of his inability to fulfill his duties.

Mr. Lovatt's performance in respect of Kim was entirely inadequate. The same is to be said of the supervision of Kim furnished by Mrs. Harvey and Mrs. Lo. Mr. Lovatt by his inadequacy permitted

their inadequacies to exist undetected until after Kim's death.

Perhaps some of Mr. Lovatt's failures in respect of Kim are summarized in the following extract from the transcript of the proceedings upon the Inquiry.

He was asked questions and responded as follows:

"Q. What do you feel that you could have done in this case that you didn't do?

A. Well, I think I should have been involved in the consultation process. I think had I been more involved we may have taken more time over some of the decisions that were made. However, it was, at that time it was recognized that the management of Family Service cases was primarily the Supervisor's job."

He was not involved sufficiently. He left authority with Mrs. Harvey. He cannot avoid responsibility by abandoning his authority and permitting Mrs. Harvey to appear to assume it.

Even Kim's death did not arouse any unusual concern in Mr. Lovatt. Again, without question he accepted her death as being the result of an accident. He asked no questions. It was almost as if he believed the adage that ignorance is bliss. If so he overlooked the obverse of that proverb to the effect that ignorance of the law is no defence. He made no suggestions as to any investigation that might be conducted. He was on vacation and left the Society in Mrs. Harvey's hands. He left it to Mrs. Harvey to advise the President of the Society that Kim had died.

In my view that was an unsatisfactory position for him to adopt. It was consistent with his prior conduct or policy of avoiding involvement and thereby, apparently he hoped, liability or responsibility.

On his return from vacation his stance and conduct in respect of Kim and her death and the

investigation into the circumstances surrounding it was such that "bizarre" might be the only word to describe it.

In my view Mr. Lovatt began then to realize the extent of his failure to achieve the standard of performance which was reasonably to be expected of a local director of a children's aid society. He began a deliberate programme of withholding comment in any form, oral or written, upon Kim's case. His expressed reason for this programme was that, since Annals Popen and Jennifer Popen had been charged with manslaughter, the matter was now in court and comment was prohibited. He even used the expression "*sub judice*."

In what I regard as a pitiful and futile attempt to defend the indefensible, he said that the meetings of the Board of Directors of the Society were open to the public and any comment at such a meeting might prejudice the right of Annals Popen and Jennifer Popen to a fair trial.

This indicates to me how shallow his reasoning was. While meetings of the Board of Directors might be open to the public I am not aware of any legislation or similar authority which would prevent the Board of Directors from dealing with some matters in camera or in closed session. Another procedure which comes readily to mind is that of utilizing a committee meeting as the forum for his report upon the case. A third even less difficult procedure would have been for him to report privately to the President of the Society and to explain his concerns about the effect of the matter being *sub judice*. Then the President at least would have been informed and would be able to decide if or how the other members of the Board of Directors might be informed.

By purporting to invoke the principle of *sub judice*, Mr. Lovatt gave a further demonstration of the truth of the proverb that a little knowledge is a dangerous thing.

In my view Mr. Lovatt was in error, and grossly so, in his understanding of the effect of the matter being *sub judice*. In my view there was no impediment to his reporting to the Board of Directors

of the Society upon the matter of Kim's death while in the care of the Society.

If he really did believe what he professed, it is another example of his lack of qualification to be a local director of a children's aid society.

That he sought no advice or assistance in his professed dilemma is further mute testimony to his lack of qualifications and competence.

Mr. Lovatt imposed that restriction upon himself without seeking advice from anyone as to whether or not it was appropriate. He applied it even to the extent that he did not mention the case to any member of the Board of Directors of the Society privately or informally and did not mention it in any report, oral or written, to the Board of Directors of the Society or any officer or committee thereof.

Mr. Lovatt's scheme of silence was successful from August, 1976 until December, 1977 when it was shattered in an explosion of disclosure of what until then had been concealed from almost everyone. In that period of time Jennifer Popen and Annals Popen were charged with manslaughter and arrested. This was mentioned in and by the media. They appeared in court and after a preliminary hearing were committed for trial. This was mentioned in and by the media. In December, 1977 their trial in a court composed of a judge and jury began in Sarnia and was duly reported upon in and by the media.

It was only then, in December, 1977, that the public and the members of the Board of Directors of the Society began to learn the true nature of the involvement of the Society in Kim's life and death. Mr. Higgins was one member of the Board of Directors who did have prior knowledge. Until then, so far as the testimony upon the Inquiry reveals, no member of the Board of Directors of the Society, other than Mr. Higgins, knew that Kim, the child named in the published articles, was a ward of the Society when she died. In August, 1976, Mr. Allen had been informed of Kim's death, but he had not associated that message with the subsequent news items relating to the charge of manslaughter against Annals Popen and Jennifer Popen. Apart from that no member of the

Board of Directors had any information as to any of the Society's involvement in Kim's life from June, 1975 until her death in August, 1976.

Mr. Lovatt had succeeded in keeping all of that knowledge and information from the Board of Directors.

In my view his decision to leave the Board of Directors unaware and uninformed is indefensible. It was an utter dereliction of his duties and responsibilities to the Board of Directors and to the Society. It might have left other children exposed to similarly poor protection by the Society. It certainly concealed all of the weaknesses of the structure and staff of the Society. It certainly protected Mr. Lovatt from adverse comment whether within or without the Society.

Mr. Lovatt knew that the Board of Directors of the Society relied upon him. He failed them.

In my view Mr. Lovatt was dissembling in his testimony purporting to explain his failure to report to the Board of Directors. In his professed desire to protect the right of Annals Popen and Jennifer Popen to a fair trial he lost sight of his own responsibilities as Local Director of the Society.

I am reinforced in this view of Mr. Lovatt by the manner in which he reported the matter to the Board of Directors at a special meeting of the Board convened by the President of the Society when the matter came to the attention of him and others through the media.

A copy of the minutes of that special meeting of the Board of Directors was produced as an exhibit upon the Inquiry. Those minutes contain a summary of the report made by Mr. Lovatt at that meeting. That summary is reproduced as Schedule 2-W to this Report.

Earlier, under date of December 8, 1977, a report upon Kim's case was prepared by Mrs. Harvey for the Ministry. This was at Mr. Lovatt's request. A copy of that report was produced as an exhibit upon the Inquiry and is reproduced as Schedule 2-X to this

report. Mr. Lovatt was aware of the contents of that report. He testified that he believed it to be a complete report.

On December 8, 1977 Mr. Lovatt reported orally, by long-distance telephone, to Mr. Charko, of the Child Welfare Branch of the Ministry. That report was made at Mr. Charko's request for information about Kim's case. Mr. Charko prepared a memorandum of that conversation which was typed under date of December 12, 1977 before Mrs. Harvey's report of December 8, 1977 was received in the Ministry. A copy of Mr. Charko's memorandum is reproduced as Schedule 2-Y to this Report.

In their report and in their testimony upon the Inquiry, the Farina Committee observed discrepancies between the report dated December 8, 1977 and the report to the Board of Directors on December 15, 1977 and between the records of the Society and those of the Sarnia Police Force. I have commented thereon in Chapter XXVIII of this Report.

Mrs. Harvey was present at the special meeting of the Board of Directors held on December 15, 1977. She joined with Mr. Lovatt in answering questions about discrepancies.

It may very well be that Mr. Lovatt in making the oral report to Mr. Charko on December 8, 1977 and the report to the Board of Directors on December 15, 1977 relied upon information given to him by Mrs. Harvey or recorded in the files of the Society.

Even a cursory examination of those three documents in the light of all the testimony upon the trial will reveal inconsistencies and errors and omissions.

Mr. Lovatt's oral report to Mr. Charko mentioned some of what occurred on June 17, 1975. There was however no mention of the information given to the Society to the effect that Kim may have been abused on earlier occasions. More importantly, while Mr. Lovatt spoke of the Society's decision to open the case and to provide service on a protection basis, there was no mention of the fact that the case

was not opened and no service was provided by the Society until August 31, 1975.

Mr. Lovatt's oral report to Mr. Charko was that "Mr. Popen was found guilty of child abuse." That in itself is imprecise and misleading. Annals Popen was charged with failing to protect Kim, not with assault.

The oral report to Mr. Charko was that the Court ordered Jennifer Popen and Annals Popen to take a Parent Effectiveness Training Course and "Mr. Popen would join Alcoholics Anonymous." That is inaccurate and misleading.

Judge Nighswander's reasons for judgement upon the Society's application made no mention of the Parent Effectiveness Training Course or of Alcoholics Anonymous; nor was the Order directed against Jennifer Popen in any way. Judge Nighswander merely placed Kim in the care of the Society and suggested that Annals Popen would have to satisfy the Court that he had successfully done something about his drinking problem before Kim would be returned.

The probation order made earlier, as a result of Annals Popen's plea to the charge under section 40 of The Child Welfare Act, was only in respect of Annals Popen and imposed terms that he abstain totally from drinking alcoholic beverages and that he take treatment for his alcoholism.

The memorandum made by Mr. Charko, after recording Mr. Lovatt's comments on events from August 31, 1975 to until as late as Kim's return home on May 27, 1976, stated

"during this period of time the Society visited the family on a weekly basis and found them to be very co-operative and willing to attempt to improve their family relationship."

That is inaccurate and misleading, particularly if the phrase "during this period of time" was meant to include the period from August 31, 1975 to February 23, 1976. In that period Annals Popen and Jennifer Popen were not co-operative and

any visits by the Society were of minimal value and were not made on a weekly basis.

While Mr. Charko recorded Mr. Lovatt's comment as to Kim's brother, Karie, having been taken into care by the Society, there is no mention that that action was taken only after the intervention of outside forces, such as the Crown Attorney and the Coroner.

Mr. Lovatt is responsible for any misapprehension that may have arisen from his oral report to Mr. Charko.

Mrs. Harvey's report dated December 8, 1977 was prepared at Mr. Charko's request. It too has some errors and omissions.

It states that Jennifer Popen and Annals Popen refused the services of the Society and The Lambton Health Unit. It does not mention Mrs. Saul's recommendation, accepted by Mrs. Harvey, that the case required long-term intervention by the Society.

It states "the case was not assigned." It does not mention that no one could explain what had happened to the material for the file between June 17, 1975 and August 31, 1975. Nor does it mention that the case was not even opened, let alone assigned, until August 31, 1975.

It speaks of a telephone call to the police and of a suggestion by the police that the Society not visit the home. As I have written in Chapter VI I am not satisfied that the police made any such suggestion or request.

It states that the Society learned of "a previous seemingly unclarified situation." That appears to relate to Kim's hospitalization in March 1975. The form of Mrs. Harvey's report would, of itself, give the impression that the Society learned of that "unclarified situation" on or after August 31, 1975. In fact, on June 17, 1975, Police Constable Gander had advised the Society of two incidents of reported abuse to Kim during the preceding six week period. Mrs. Dick had mentioned this in her recording dated June 17, 1975.

Mrs. Harvey's report states that the solicitor for Annals Popen and Jennifer Popen wanted the Society's application for wardship to be heard on the same day as the charge against Jennifer Popen and Annals Popen under The Child Welfare Act. It went on to state that the Society wanted the matters heard on separate dates.

I am not satisfied that either of those statements is correct. Mr. Higgins arranged to have the charge under The Child Welfare Act dealt with on February 23, 1976, two days before the Society's application was heard. But neither Mr. Higgins nor anyone on behalf of the Society expressed in Court any desire such as Mrs. Harvey mentioned in her report.

Mrs. Harvey's report contains the statement that on, February 25, 1976, Annals Popen and Jennifer Popen were "advised to co-operate" with the Society and to attend courses suggested by the Society. That is at variance with Mr. Lovatt's oral report to Mr. Charko and with the transcript of the proceedings in Court.

In her report Mrs. Harvey wrote at some length to describe Mr. Carter's difficulties. She wrote of Mrs. Lo's weekly visits from February 27 to July 6, 1976. In that latter regard her report is more accurate than Mr. Lovatt's oral report to Mr. Charko.

Mrs. Harvey wrote of the psychiatric assessment of Annals Popen, obtained as part of a pre-sentence report in March, 1976. She wrote that that assessment indicated that Annals Popen was not in need of psychiatric treatment. She made no mention of the difficulties expressed by Dr. Curtin in that report to the effect that the information provided was such as to cause him to wonder about its reliability. Dr. Curtin's report was not as positive as Mrs. Harvey suggested.

Mrs. Harvey wrote of a conference to decide that Kim would be returned to her home before the birth of Jennifer Popen's next child in July, 1976. She did not mention that in fact she had made the decision that Kim would be returned and that any conference was limited to discussion only of when the

return would be effected in relation to the anticipated birth.

Mrs. Harvey wrote of a nurse of The Lambton Health Unit being involved with the family after the birth of Karie. She did not report how limited was that involvement. The nurse had made only one short visit on August 10, 1976, the day before Kim died. That visit related only to Karie and his care. The nurse did not see Kim that day.

Mrs. Harvey's report would give the impression of ongoing involvement by The Lambton Health Unit from Karie's birth. Mrs. Harvey's report is misleading.

Mrs. Harvey wrote of the police investigation on August 12, 1976 and that "it was no longer possible to talk with the family." No basis for that statement was given in Mrs. Harvey's report or elsewhere. Mr. Lovatt in his testimony said simply that, because the case was already before the Court, he consciously decided "to leave the matter as it was." That comment was related to the question of informing the Board of Directors. It seems reasonable to extend its implication to include investigation of Kim's death by the Society because Mr. Lovatt acknowledged he did nothing to gain any information when senior police officers seemed inclined to give him only the slightest of information in respect of the police investigation of Kim's death.

Mr. Lovatt's report to the Board of Directors on December 15, 1977 contained a number of statements which are surprising in light of his oral report to Mr. Charko of December 8, 1977 and Mrs. Harvey's written report prepared at his request the same day.

In his report to the Board of Directors he said that in June, 1975 there was insufficient evidence to warrant the Society's intervention, that Jennifer Popen had a plausible reason for Kim's bruises and that the police accepted a watching brief. Mrs. Harvey's report made no mention of any "plausible reason" given by Jennifer Popen.

More importantly, Mr. Lovatt's report is false and misleading when it states that there was

insufficient evidence to warrant the Society's intervention. If "intervention" were interpreted as being synonymous only with "apprehension of Kim" his statement might have been reasonable and understandable. However, in the light of the testimony of both Mrs. Saul and Mrs. Harvey, supported by that of Mrs. Dick, it is abundantly clear that, in June, 1975, Mrs. Saul had felt that the Society should be involved and work with the Popen family immediately and that the work would continue for a long time. It is equally clear that Mrs. Harvey had shared Mrs. Saul's opinion.

Regretfully one can only infer that Mr. Lovatt sought to mislead the Board of Directors. He did not tell them that the file material was misplaced and that, contrary to the intention and desire of Mrs. Saul and Mrs. Harvey, the file was not opened in June, 1975. That "oversight" in the handling of Kim's case was such a gross error by the Society that Mr. Lovatt could not simply have missed it if he had made any reasonable effort to prepare a full and forthright report to the Board. His failure to mention it could only have been deliberate. While there was no direct testimony as to his motives, I infer he was seeking for his own reasons to conceal his inadequacies and those of the Society.

Clearly Mr. Lovatt was still relying upon Mrs. Harvey when he spoke of the police accepting a watching brief. He had made no inquiry of the police.

The next paragraph of his report, as recorded in the minutes of the meeting, is an even more glaring example of misstatement by Mr. Lovatt. He said a call to the hospital made the Society aware of previous injuries to Kim and therefore she was taken into care.

That would lead one to believe that the Society, on August 31, 1975, had initiated a call to the hospital and, only then, learned of some earlier injuries to Kim.

In fact, on June 17, 1975, the Society had been made aware of allegations of two prior incidents of injury to Kim in which child abuse was suspected.

In fact, on August 31, 1975, the police and hospital personnel had sought the assistance of the Society because of Kim's injuries existing at that date.

Mr. Lovatt's report to the Board of Directors does not disclose that Kim had suffered fresh injuries which led to her admission to hospital on August 31, 1975. Mr. Lovatt's report makes no mention of the discovery, by X-ray, of rib fractures suffered by Kim between March and September, 1975.

In my view those errors in Mr. Lovatt's report are too gross to have been inadvertent or to have been the result of poor selection of words and terminology. In my view they were part of an effort to mislead the Board of Directors and to conceal the truth.

Mr. Lovatt's report mentioned that between September, 1975 and February, 1976 the Society was cautioned not to talk to Kim's parents. His report did not disclose that the so-called "caution" was issued by Mr. Higgins on behalf of Annals Popen and Jennifer Popen and that the Society took no steps and sought no advice to attempt to be relieved of any supposed limitation upon its right to do what Mr. Carter regarded as normal casework.

Again the Board of Directors were misled. The form of Mr. Lovatt's report would reasonably lead them to believe that the "caution" came from some source, perhaps such as the Court, empowered or authorized in some way to direct or regulate the activities of the Society or perhaps from a source intending to be helpful to the Society.

The next portion of Mr. Lovatt's report is another instance of error and omission. He told the Board of Directors that Annals Popen "accepted full responsibility" for Kim's injuries in August, 1975 and that Jennifer Popen was absolved from guilt.

In Chapter VIII of this Report I have reviewed the transcripts of proceedings in the Provincial Court (Criminal Division) of the County of Lambton on February 23, 1975. That transcript contains no acceptance of full responsibility by Annals Popen. It discloses merely a plea of guilty and a

disclaimer of knowledge of what happened, coupled with a willingness on the part of Annals Popen to believe what he was told.

Furthermore, Jennifer Popen was not "absolved from guilt." By reason of an agreement with Mr. Higgins the Crown Attorney chose not to proceed against her. In testimony upon the Inquiry both Mr. Lovatt and Mrs. Harvey decried that action by the Crown Attorney and proclaimed their continuing suspicion as to Jennifer Popen's involvement with the injuries to Kim. Mr. Lovatt did not advise the Board of Directors of the Society of that.

The next statement by Mr. Lovatt to the Board of Directors is incomprehensible. He said that, from August, 1975 until February 25, 1975, "considerable evidence had accumulated on Mr. Popen's behaviour." That is just not so. Until February, 1976 Mr. Carter, who was then assigned to the case, had been unable to carry out all of the work he wanted to do on the case and which he regarded as normal casework. Even the two items mentioned by Mr. Lovatt, namely that Annals Popen had stopped drinking and had attended Alcoholics Anonymous, were largely, if not entirely, based on statements by Jennifer Popen and Annals Popen.

That leads directly into the next part of Mr. Lovatt's report to the Board of Directors. He told the Board that Annals Popen was examined by a psychiatrist pursuant to an order of the Court. That may be correct in spirit, but the examination came about as part of a pre-sentence report ordered by Judge Nighswander after Mr. Higgins made some submissions on behalf of Annals Popen wherein he had requested some investigation before sentence was imposed and had suggested that a probation officer might assist the Court.

The next part of Mr. Lovatt's report to the Board of Directors is another mixture of error and omission. He said the reports following the psychiatrist's examination were positive.

In fact there was only one report upon Annals Popen, but attached to it was an earlier consultation note written after the psychiatrist's examination of Jennifer Popen some months earlier.

Mr. Lovatt then set forth only the first sentence of the final paragraph of Dr. Curtin's report upon Annals Popen dated March 19, 1976. Even that sentence is not, in my view, positive. It is merely a statement that, if certain things were to occur, the future risk to Kim would be minimized.

Mr. Lovatt might more properly have informed the Board of Directors of the concerns expressed by Dr. Curtin in the preceding paragraphs of his report. Dr. Curtin, after setting out Annals Popen's abstinence, attendance at Alcoholics Anonymous and willingness to attend courses, had written:

"Even though all these things would surely minimize the danger in the future I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.

In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

In my opinion, Dr. Curtin's report is far from positive. Mr. Lovatt did not correctly and fully apprise the Board of Directors of the contents of that report. That reinforces my opinion of Mr. Lovatt expressed earlier in this Chapter.

In the next part of his report Mr. Lovatt spoke of The Lambton Health Unit and the probation officer confirming that they saw nothing to lead them to suspect that Kim had been abused. That may be correct so far as it goes, but it did not inform the Board of the limited observations that those informants had felt free to make. Thus the Board of

Directors was not informed of the limited and doubtful value of any such observations.

Then Mr. Lovatt went on, in his report to the Board of Directors, to enumerate seven pieces of information which, he said, were on file in the Society when "the decision was made to return Kim home on May 27, 1976."

He said that The Society knew that Annals Popen and Jennifer Popen wanted Kim returned and Mr. Higgins would "fight" for that. That is understandable, but the probability of a "fight" should not have swayed the Society in its consideration of whether or not Kim's return would be appropriate. One would expect that the Society, responsible for Kim's protection, would "fight", if need be, to protect her.

More seriously, no mention was made of Judge Nighswander's statement, in his reasons for judgement expressed on February 25, 1976, that Annals Popen

"must give evidence that he had done something [about his alcohol problem] and that it is succeeding, before the Court will permit the child to return to its parents."

Even if there were a "fight" there was no indication that Kim's return would necessarily result.

Mr. Lovatt said that Annals Popen and Jennifer Popen had attended the Parent Effectiveness Training Course and had participated satisfactorily. He did not say that the Parent Effectiveness Training Course had begun on April 26, 1976 and the decision as to Kim's return was made on May 7, 1976, less than two weeks later, before the completion of the Course. Perhaps more importantly he did not advise the Board of Directors of the doubtful value of the Course to Kim's parents as was indicated by testimony upon the Inquiry. This paragraph of his report was the further result of selective comment by Mr. Lovatt.

Mr. Lovatt's next paragraph was at least misleading if not utterly false. He told the Board that Annals Popen and Jennifer Popen "had co-operated

in every way" with the Society and the probation officer.

They may have co-operated with the probation officer, but Annals Popen was bound by an order of the Court; so, to that extent, his "co-operation" should not have been a factor.

"Co-operation" with the Society was not apparent from August 31, 1975 until mid-February 1976 when the Crown Attorney accepted the proposal put forward by Mr. Higgins. Until then Mr. Carter had been unable to carry out normal casework. Even in his own report of December 15, 1977 Mr. Lovatt had noted, without identifying the source, the caution to the Society not to talk to Annals Popen and Jennifer Popen. Mrs. Harvey, in her report of December 8, 1977, referred to the sanctions imposed by Mr. Higgins. She also wrote of Jennifer Popen's being "resistent (sic) to Mr. Carter's efforts to help her" and being suspected of lying to Mr. Carter. That hardly merits Mr. Lovatt's fulsome expression of their co-operation with the Society in every way.

The next statement in Mr. Lovatt's report was probably essentially correct. It was that Annals Popen had stopped drinking and had attended Alcoholics Anonymous.

The next statement by Mr. Lovatt was misleading at least and probably greatly in error. He said:

"Kim would be returned to her parents at the Aug. 4, 1976 Court Hearing because of lack of evidence to refute this action from taking place."

That was an amazing confession. The only hearing scheduled for the Court on August 4, 1976 in respect of Kim was the Society's application for supervision of Kim in extension or variation of the Order made on February 25, 1976 which would ordinarily have expired after August 24, 1976. Mrs. Harvey and Mrs. Lo must have felt that at least such a supervisory order, if not a continuation of wardship, was appropriate. Otherwise they would not have decided to bring the application rather than merely

applying for an order terminating the Order of February 25, 1976 before August 24, 1976.

Mr. Lovatt was at least presumptuous to state positively what Judge Nighswander would have done upon the Society's application originally presented on August 4, 1976 or upon any application for further consideration of the Order he had made on February 25, 1976. Mr. Lovatt completely overlooked the comments of Judge Nighswander, in his reasons for judgement on February 25, 1976, when he stated that Annals Popen would have to give evidence of having successfully coped with his problem with alcohol "before the Court will permit [Kim] to return to [her] parents."

In the light of that Mr. Lovatt has put himself in another situation of having to select one of two undesirable explanations for his statement. One explanation would be that Mrs. Harvey and Mrs. Lo were presenting a frivolous or inappropriate application to the Court on August 4, 1976. The other would be that the Society was taking upon itself the task of pre-judging the result and in so doing was assuming a result adverse to the Society and thereby was acknowledging insufficient preparation or gathering of evidence to support the application.

The next paragraph of Mr. Lovatt's report was another inappropriate statement of negative pre-determination of the Court's decision upon the Society's application on August 4, 1976. It was the blunt statement that, on August 4, 1976, the Court "would have terminated the wardship." Judge Nighswander's judgement hardly supports the certainty of that result.

Mr. Lovatt then stated that the Society made the decision to return Kim to her parents "based on all the best evidence available at the time."

That simply does not stand up to the scrutiny of the Inquiry. Upon the Inquiry Mrs. Harvey sought to defend her decision which had been made as early as February, 1976. She stood in lonely, pitiful isolation. No witness who had any training, knowledge or expertise in dealing with cases of child abuse agreed with her. My memory is

that none could find any factor which would have supported a decision at that time to return Kim to her parents.

In my view, simply put, Mr. Lovatt was seeking to mislead the Board of Directors. I am satisfied that "the best evidence available at the time" did not support Mrs. Harvey's decision which, by reason of the organization of the Society created or permitted by Mr. Lovatt, became the Society's decision.

Mr. Lovatt did not advise the Board that Mr. Carter and Mrs. Kirby of the Society's staff and Police Constable Wyville had strongly expressed opposition to Mrs. Harvey's position, stated in February, 1976, that Kim would be returned to her parents.

The closing sentence of Mr. Lovatt's statement to the Board of Directors, as recorded in the minutes of the meeting, was not open to argument or doubt. He said:

"That decision [to return Kim] proved to have unfortunate consequences."

The consequence for Kim was disastrous. She died.

The consequences for Mr. Lovatt were disastrous. His incompetence and inadequacies as the Local Director of the Society were revealed.

The consequences for Mrs. Harvey were disastrous. Her insistence upon forcing her will on others overtook her. She was shown to have made a grievous error. Her inadequacy as a Supervisor of the Society was revealed.

The consequences for the Society, its staff and its clients were disastrous. The reputation of the Society, whatever it may have been previously, was diminished. That would affect the lives and careers of its staff. Those effects would impair the ability of the staff to continue to serve its clients. That was part of the situation Mr. Zwerver came upon in March, 1978.

What I have written is a harsh statement in respect of Mr. Lovatt. It is unfortunate that it had to be made.

In part it came because of his faith in, dependence upon and loyalty to Mrs. Harvey. It need not have been made if he had been more assertive, more aggressive and more effective as the Local Director of the Society.

In part it came because he chose, in effect, to permit the management of the most serious case of child abuse in the Society in his memory to proceed with virtually no contribution of knowledge or expertise from him and with virtually no supervision by him. Even Mr. Lovatt as he testified rued his own shortcomings in respect of Kim and her tragedy.

All of that reflects the personal disaster that overtook Mr. Lovatt despite all of his interest in the work and aims of the Society.

His failure to advise the Board of Directors of the Society of the impending storm which might have been expected to assail the Society after Kim's death is not in any way attributable to Mr. Lovatt's interest in his work. His stated reason for not advising the Board is shallow.

I do not accept that any concern for any limitation of discussion, which he suggested came about because Annals Popen and Jennifer Popen had been charged with manslaughter, led him to remain silent. I can only infer that he did not advise the Board of Directors because he hoped that whatever did develop would not involve the Society and that the failures of the Society, and thus of himself, would remain concealed.

That would have been the case except for some statements upon the actions of the Society made unexpectedly during, but not as part of the trial of Annals Popen and Jennifer Popen in December, 1977. From August 11, 1976 until December, 1977 no one had publicly connected Kim's death with any possible mismanagement by the Society.

Even when the matter was first raised Mr. Lovatt did not become an aggressive and effective Local Director of the Society. Instead of beginning an investigation within the Society to determine what had occurred in Kim's case he merely asked Mrs. Harvey to prepare a report for the Child Welfare Branch and he spoke by telephone with Mr. Charko.

There was no testimony to suggest that when the matter became of public interest Mr. Lovatt took any positive step. He did not even telephone Mr. Allen, the then President of the Society, to give him any advice or information about what was happening or had happened.

His report to the Board of Directors was really a pathetic effort. It was incomplete and misleading.

In light of his own testimony as to his preparation of another report for a meeting of the Board of Directors, one can only wonder how much time and effort he put into preparing for that special meeting of the Board of Directors. The result, as revealed upon the Inquiry, would suggest that the time at least might have approximated the few minutes he spent in preparing for a committee meeting and a meeting of the Board of Directors on the day he outlined during his testimony upon the Inquiry as a typical day of his duties.

Beneath the incompetence and inadequacy that would permit Mr. Lovatt to remain silent from August, 1976 until December, 1977 and then to produce such an incomplete and misleading report for those whom he knew relied upon him, there must be another facet of Mr. Lovatt.

Perhaps it was pride which prevented him from acknowledging that the Society and he might be criticized for the management of Kim's case and from acknowledging that such criticism might be valid.

Perhaps it was fear that his position and employment might be uncertain if his performance were closely and critically examined.

Whatever the reason, Mr. Lovatt's failure to advise the Board of Directors of the possible

consequences to the Society of Kim's death was nothing less than a dereliction of his duty to the Society and to its Board of Directors. That dereliction began in August, 1976 and continued until December, 1977 when it was compounded by an inaccurate and misleading report to the Board of Directors. Even in December, 1977 Mr. Lovatt did not face the reality of what had happened.

In December, 1977, if Mr. Lovatt had personally investigated the handling of Kim's case by the Society, he should have been able to detect many of the matters mentioned by the Farina Committee and by Mr. Zwerver in their respective reports to the Board of Directors and testimony upon the Inquiry.

He should have seen the discrepancies between various documents mentioned by the Farina Committee. Some discrepancies were within the Society's own records and documents. Some were between the Society's records and those of the Sarnia Police Force.

He should have seen the inadequacies within the Society. It lacked appropriate policies and procedures. Even the procedures which Mr. Lovatt and Mrs. Harvey described as being well-known within the Society were not followed.

He should have seen that something was seriously amiss between June 17, 1975 and August 31, 1975. It is disturbing to contemplate that, if Kim had died on August 31, 1975, the entire deficiency of the Society might not have been revealed.

He should have seen that from August 31, 1975 until February, 1976 the Society was not fulfilling all of its duties. The Children's Services Department was ensuring Kim's physical safety and well-being. The Family Services Department was virtually dormant and whatever little it did do it did poorly.

He should have seen that Mrs. Harvey and Mr. Carter were unable or unwilling to deal effectively with the matter.

He should have seen that the preparation for hearings in Court was not satisfactory.

He should have seen that the presentation of the Society's application to the Court was inadequate.

He should have seen the problems and frictions between the two departments of the Society and Mrs. Harvey's virtual autocracy. In fact he did testify that he was aware of them and had tried to resolve them. The futility of any such attempt was apparent from the testimony upon the Inquiry.

He should have seen that the transfer of Kim's case from Mr. Carter to Mrs. Lo was not conducted in keeping with reasonable and usual practices, practices which he said were well known even within the Society. That comment applies not only to the transfer itself, but also to the more basic decisions, firstly that Mr. Carter should be relieved and secondly that the case should be assigned to Mrs. Lo.

He should have seen that the decision to return Kim to her parents was not reached in keeping with reasonable and usual practices.

He should have seen that that decision was not an appropriate decision and that it was made by Mrs. Harvey alone and was subsequently forced upon others who were left to determine the subsidiary issue as to when that decision should be implemented.

He should have seen that Mrs. Lo's supervision of Kim's care was not satisfactory.

He testified that he

"had been led to believe that the child [Kim] was being medically seen."

So far as the Society was aware, Kim was not "medically seen" between May 27, 1976 and her death. The records of the Society and the testimony upon the Inquiry do not suggest otherwise.

He said he had had some concern about Mrs. Lo's ability to handle Kim's case and had obtained Mrs. Harvey's undertaking to supervise Mrs. Lo closely. His attention was directed towards Mrs. Lo, but he could not or would not recognize the problems.

He should have noticed the lack of appropriate communication between the Society and other provincial and local authorities or agencies involved with the Popen family.

He should have learned that people within and without the Society had expressed opposition to Mrs. Harvey's statement in February, 1976 that Kim would be returned to her home.

None of these matters was mentioned by Mr. Lovatt to the Board of Directors. Mr. Lovatt's report could very well have led the Board of Directors to believe that the Society and its personnel had attended to Kim's case in an entirely acceptable fashion and that there was no cause for concern about any criticism of the Society that might be voiced.

That latter view is enhanced when one notes that Mr. Lovatt's report to the Board of Directors concluded with three recommendations, written in the minutes of the meeting as follows:

"(a) That a formal reporting system in cases of child abuse be established between the C.A.S., Lambton Health Unit, and the Probation Services.

(b) In cases of child abuse, the children can no longer be returned to parents without Court involvement.

(c) That we require Medical examination and report every two weeks where C.A.S. has supervision of 'at risk' child. Failure to do so should compel a return to Court."

Even those recommendations do not address the basic problems of the Society which were disclosed by Kim's case.

There is no mention of the lack of appropriate policies and procedures within the Society.

There is no mention of the inadequacies of some of the personnel of the Society.

There is no mention of dissension between the two departments of the Society.

There is no mention of any problems of the staffing or finances of the Society.

The first recommendation is really a damp squib. It suggests the establishment of a formal reporting system among the Society and two other bodies, The Lambton Health Unit and Probation Services. That did not include the police forces, the school or education authorities, the hospitals, the medical profession and others who might from time to time be the first to observe some symptom of possible child abuse. Nor did it go beyond a "formal reporting system" and include the need for ongoing consultation and co-operation amongst all concerned.

Even more devastating to Mr. Lovatt's position as Local Director of the Society is the uncomplicated question "If Mr. Lovatt saw fit to make any recommendations in December 1977, as a result of Kim's death, why had he not done so earlier, perhaps in August or September 1976, when Kim's death first came to his attention?"

There was no testimony that Kim's death stirred Mr. Lovatt to any action until December, 1977. Even then it was not her death, but the publicity resulting from it, which led to his recommendations to the Board of Directors.

There was no testimony that he attempted at any time to implement any of the three recommendations he made in December, 1977. The last two at least were entirely within the control of the Society.

That uncomplicated question cannot be directly answered on the basis of the testimony upon the Inquiry. The answer is with Mr. Lovatt. By reason of the particular circumstances of the Society it also is with Mrs. Harvey.

Mr. Lovatt bears the ultimate responsibility for the conditions within the Society which contributed to Kim's death.

He also bears the ultimate responsibility for the failure of the Society to take any steps to correct the deficiencies of the organization, administration and operation of the Society. Insofar as Kim's case is concerned the existence of those deficiencies was revealed initially on and immediately after June 17, 1975, again immediately after August 31, 1975 and until August 11, 1976 and then finally on August 11, 1976 when Kim died.

None of that revelation of deficiencies was enough to stir Mr. Lovatt to deal with them. Presumably he was content to deal with the myriad of minute, picayune and menial tasks which absorbed his time and interest on the typical day he described.

Mr. Lovatt did state in his testimony that Mrs. Harvey had been working to prepare procedures for the Society to use in the handling of cases of child abuse. He said she was so engaged for some time prior to December, 1977. There was no testimony to indicate how far Mrs. Harvey had proceeded at any time. Clearly nothing was accomplished to the extent that it could be shown to the Farina Committee, in February, 1978, and to Mr. Zwerver, in March, 1978, as a document representing the policies and procedures of the Society. Not even a draft of such a document was produced to the Farina Committee, Mr. Zwerver or the Inquiry.

In that regard too it must be remembered that, in July, 1976, the Ontario Association of Children's Aid Societies had published the lengthy document entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse" which was filed as an exhibit upon the Inquiry. Mr. Lovatt testified that the Society received its copies of that pamphlet in August, 1976 after Kim's death.

I have read that pamphlet. I note particularly that the compilers of the guidelines requested the children's aid societies to review them and to test and modify them in the hope that, upon the basis of the societies' reported experience with them, the guidelines might then be suitably amended. There was no testimony that the Society in anyway applied or commented upon that initial set of guidelines.

There are other aspects of Mr. Lovatt's performance of his duties, apart from those directly touching upon Kim's case and which I have already mentioned, which I wish to discuss.

I wish firstly to consider Mr. Lovatt's duties, as Local Director of the Society, to the Board of Directors of the Society and thus to the Society, its staff and its clients.

Section 4 of The Child Welfare Act requires every children's aid society to appoint a local director and it imposes responsibility upon anyone so appointed. The local director of a children's aid society is responsible to the board of directors of the society for the administration and enforcement of The Child Welfare Act and the regulations made thereunder. The local director of a children's aid society must co-operate to that end with the Director appointed for the purposes of that Act. The local director of a children's aid society must also carry out other duties as are required by the society.

In Chapter XVII of the Report I have examined the role of the Board of Directors of the Society as it related to Kim's case. Until December, 1977 the Board of Directors was essentially unaware of Kim's case. In August, 1976 Mrs. Harvey had told Mr. Allen, the then President of the Society, of Kim's death. He was led to believe that Kim had died as the result of an accident. He did not react in any way to Mrs. Harvey's message. For all practical purposes, until December, 1977, the Board of Directors knew nothing about the management or mismanagement of Kim's case and they were no more aware of it than they were of any case within the Society.

The Board of Directors of the Society was composed of lay persons who had no particular knowledge of or experience or expertise in social work or child welfare. They were entirely dependent upon Mr. Lovatt for guidance in their discussions and decisions. Mr. Lovatt was aware of their dependence upon him. I am satisfied that such a relationship is usual and accepted between a board of directors of a children's aid society and its local director.

In his testimony upon the Inquiry during which he described some of the things he did,

Mr. Lovatt was, in a sense, complaining that too much was demanded of him. But yet Mrs. Woods testified as to his reaction to her efforts to relieve him of the relatively minor task of calling a meeting of one of the committees of the Board of Directors. Mr. Lovatt did not appreciate her effort and seemed almost to resent it as an intrusion upon his domain. As a result Mr. Lovatt was left with such simple or mundane tasks.

That was but an example of what I noted throughout Mr. Lovatt's testimony. He did a number of things which others could and should have done and would have done if required or requested to do. At the same time he neglected a number of duties which, I am satisfied on the testimony of expert witnesses, he should have been performing.

Even as he testified as to his workload he gave considerable detail about moving the typewriter, loading the crib and servicing the automobile, but he gave virtually no detail of what he did in those broader more important areas of his responsibility. He spoke of meetings with managerial staff, of time spent planning development of the Society and the use of personnel, of time spent on the relationship of the Society with other children's aid societies, of time spent in community work and of time spent in consultative meetings. He gave no details of any of the matters involved in such efforts.

I was left to wonder what plans he might have had for the development of the Society. At the same time I wonder what subjects were discussed in managerial meetings and consultative meetings and what he did to further the Society's position in the community and with other children's aid societies.

Frankly I am not satisfied that Mr. Lovatt had any plans whatsoever for the development of the Society in the sense that development meant improvement in the quantity or quality of services provided by the Society or the addition of other services not previously provided.

Similarly I am not satisfied that anything of significance was involved in managerial meetings or consultative meetings or in planning the use of staff. In Kim's case Mrs. Harvey to all intents and

purposes merely advised Mr. Lovatt of what she had done and he accepted it.

On the basis of Mr. Zwerver's testimony as to the opinion of the Society held by others participating in the operation of the child abuse clinic, I am satisfied that Mr. Lovatt was not very successful in what he categorized as "community work." Certainly he spent time dealing with others, but the results were not very gratifying. The sad part is that Mr. Lovatt did not seem to realize what was occurring all about him. But he should have.

The same remarks apply to the matters of the relationship of the Society with other children's aid societies. Again, Mr. Zwerver spoke of the reputation of the Society among social workers at various meetings he attended. It was not a high opinion. And again Mr. Lovatt did not realize it, but he should have.

From the testimony upon the Inquiry, particularly that of the members of the Farina Committee and Mr. Zwerver, I am satisfied that Mr. Lovatt did not fulfill his obligation and responsibility to assist the Board of Directors of the Society in the performance of its duties.

At least two of the persons who were or had been members of the Board of Directors and who testified upon the Inquiry expressed a particular interest in the financial affairs of the Society. That was Mr. Wryzykowski's main interest and Mr. Higgins felt a duty to oversee the expenditure of public money. Mrs. Woods testified that the representatives of the municipal councils upon the Board of Directors felt a similar duty.

Mr. Zwerver reported to the Board of Directors upon a number of matters which he regarded as deficiencies in the organization and functioning of the Board. I have already dealt with Mr. Zwerver's comments upon the absence of adequately functioning committees of the Board of Directors and the effect thereof. Mr. Zwerver received the full co-operation of the Board of Directors in correcting that matter when they were informed of the problem.

Mr. Lovatt testified that he accepted that criticism expressed by Mr. Zwerver. He believed it to be a valid criticism and he agreed with the steps taken to correct the situation.

It was criticism that Mr. Lovatt should have expressed to the Board of Directors long before March, 1978. He had not done so. They were corrective measures he should have taken long before March, 1978. He had not done so.

I am satisfied that during Kim's lifetime the organization and functioning of the Board of Directors was as deficient as Mr. Zwerver found it to be in March, 1978. If Mr. Lovatt could accept and agree with Mr. Zwerver's criticisms and remedial actions there is no reason to believe that, in 1975 and 1976, he was not equally aware of the deficiency. If he was not aware, he should have been. In any event Mr. Lovatt provided no guidance to the Board of Directors to correct the unsatisfactory condition. It was another example of his incompetence or ineptitude.

Secondly I want to examine the various aspects of Mr. Lovatt's activities as they affected or were governed by the relationship of the Society with the Ministry.

In Chapter XXVI I examine the role of the Ministry in Kim's life. It was an indirect role, but there were several different facets to the relationship of the Ministry and the Society. In Chapter XXVI I comment upon the financial areas of the relationship. The Ministry was obliged to provide funds to the Society and about eighty per cent. of the Society's annual income was provided through the Ministry.

The Ministry had a great interest in the financial affairs of the Society and exercised considerable control upon them. This began with an elaborate procedure for the minute examination of the Society's proposals for the expenditure of funds. It entailed application of arbitrary restraints upon expenditures. A vast number of directives and memoranda flowed from the Ministry to the Society in respect of financial matters. Only if and when the Society's proposed budget was approved by the

Ministry, after amendment to satisfy the Ministry, would the Ministry commit itself to provide funds. It was often times a long and tedious process, begun late in one year in respect of the coming year and often not completed until late in the current year, several months after the process began and several months into the year which was in question.

If the Ministry was very interested in the financial affairs of the Society and spent much time and effort thereon it found a willing and like minded associate in Mr. Lovatt. At the expense of a proper performance of other duties he spent an inordinate amount of time upon the budgetary and fiscal affairs of the Society.

I am satisfied that any financial problems the Society underwent during Kim's lifetime did not directly affect her and her life and her death. I am unable to form any definite opinion as to anything that may have flowed from the financial matters to have had even an indirect or intangible effect thereon.

Mr. Zwerver spoke of problems of morale among the personnel of the Society. He spoke of beliefs of the staff that they were working more than was indicated by the records maintained by the Society. All of that may have, intangibly and indirectly, had some effect upon the Society's performance of its responsibility in relation to Kim. There was no testimony to indicate any such effect.

There was testimony also of different theories as to the management of child welfare. One theory seemed to favour apprehension or removal of the child from the problem home. Another seemed to favour leaving the family together, or at least returning the child to it quickly. Again there was no testimony to indicate that financial or budgetary matters played any part in the selection of any theory for the management of Kim's case.

Be that as it may Mr. Lovatt presented himself to the Inquiry as a man plagued by the problems of managing the Society without adequate resources. He said that the years of Kim's life presented his greatest difficulties in that regard.

Mr. Lovatt was Local Director of the Society during nine financial years. In seven of those years the Society incurred a deficit, the greatest being about \$51,000.00 in 1975. In two years, 1969 and 1977, the Society enjoyed a surplus.

There was considerable testimony upon the Inquiry as to the difficulties which the Society and Mr. Lovatt encountered in securing the Ministry's approval of the Society's proposed budget for the year 1976. I shall deal with that testimony now and then shall attempt to compare or contrast the events surrounding the Society's budget for the year 1976 with or to those surrounding the Society's budget for the year 1978. That comparison or contrast will provide a basis for assessment of Mr. Lovatt's competence or ability to deal with the Society's budgetary and financial affairs.

The distinctive problems surrounding the Society's budget for 1976 had their genesis in a meeting convened by the then Minister, The Honourable James Taylor, Q.C., and held in Toronto on December 18, 1975. It was attended by local directors and presidents of children's aid societies.

Representatives of the Ministry advised those present that financial restraints were to be imposed upon children's aid societies. The effect of the restraints was intended to limit any increase in the expenditure of each society to an amount equal to 5.5% of its expenditures as shown in its budget for the year 1975 approved by the Ministry.

Of particular concern to the Society was the further statement that no assurance could be given that any deficit incurred by a society in its 1975 operation would be approved by the Ministry so as to enable the amount of any such deficit incurred by the Society to be paid to the Society by the Ministry, the City of Sarnia and the County of Lambton.

That particular concern of the Society arose from the fact that in its 1975 operations it incurred a deficit of \$50,787.40.

I am sympathetic to Mr. Lovatt's concern. The Society's budget for 1975 had been \$567,067.00.

With the amount of the deficit the Society's expenditures in 1975 were \$617,854.40. The Ministry's stated position was that it would approve the Society's proposed budget for 1976 provided it was not more than 105.5% of the approved budget for 1975. There was no assurance that the Ministry would approve the deficit incurred by the Society in 1975. Thus the Ministry was proposing to approve of expenditures in 1976, exclusive of the deficit from 1975, in the amount of \$547,468.29 whereas the Society's actual expenditures in 1975 had been \$617,854.40. Presumably too any such approved budget would have to provide for payment by the Society of its deficit for the year 1975.

The dilemma for Mr. Lovatt might be presented in tabular form as follows:

	<u>1975</u>	<u>1976</u>
Approved budget	\$567,067.00	\$567,067.00
expenditures 1975		
Add 5.5% for 1976		31,188.69
Deficit incurred	50,787.40	
	<u>\$617,854.40</u>	<u>\$598,255.69</u>
Less retirement		50,787.40
1975 deficit		
Funds available for	<u>\$617,854.40</u>	<u>\$547,468.29</u>
current year		

As initially presented, the Ministry's proposal would have left the Society, after retirement of the 1975 deficit, with funds available for 1976 expenditures about \$70,000.00 less than were actually spent in 1975 and about \$20,000.00 less than the approved budget for 1975.

In the light of all circumstances that position taken by the Ministry would be devastating to Mr. Lovatt and the Society.

Mr. Taylor addressed the meeting and explained the attitude of the Ministry as to how the various societies might curtail their expenditures. The Ministry did not intend to direct specific reductions, but expected the societies "[would] make selective cuts in order to preserve the present level

of service supplied." The Ministry felt that the societies and the Ministry together must make the decisions "taking into account local variance and needs."

Those remarks by Mr. Taylor must be assessed in the context of a memorandum dated December 16, 1975 and signed by Mr. Macdonald as Director, Children's Service Bureau of the Ministry. The memorandum was sent to all children's aid societies in Ontario for consideration in connection with the preparation of their budgets for 1976.

In that memorandum Mr. Macdonald recognized the difficulties which the Ministry's restraint would create for the societies. He recognized that "any detailed set of definitive guidelines [would] have a differential impact on the individual Children's Aid Societies." He sought the advice and assistance of the societies in preparing a set of guidelines

"designed to ensure that the child welfare system lives within the overall guideline with the least possible disruption of current planning and service levels."

Mr. Macdonald then set forth in his memorandum a number of tentative guidelines for discussion and consideration for inclusion in the guidelines to be made applicable to all societies.

The minutes of a meeting of the Board of Directors of the Society held on January 6, 1976 disclose that, at that meeting, Mr. Lovatt reported upon his attendance at the meeting on December 18, 1975. His report appears to have been fairly accurate.

At that meeting a decision was made to approach the Member of the Legislative Assembly representing one of the constituencies containing the City of Sarnia and the County of Lambton. The purpose of that approach was to enlist his support in seeking relief from the rigid application of the Ministry's proposed restraint. The basis of the request was that the Society had increased costs because of an increase in the number of children in its care. In the end that approach failed when

Mr. Taylor refused the submission on behalf of the Society.

Nowhere in the testimony or the many documents produced as exhibits upon the Inquiry is there any indication that Mr. Lovatt advised or reminded the Board of Directors of the Society or that the Board of Directors was otherwise aware of the provision of section 11 of The Child Welfare Act which enabled a children's aid society to contest the proposed decision of the Minister to approve the Society's proposed budget in an amount less than set forth in that budget.

It is impossible to know what might have happened had the Society chosen to make the necessary request under section 11 of The Child Welfare Act. It may very well be that it would have been a fruitless effort, but, in my view, it was a possible course of action of which the Board of Directors should have been aware. It was for them, fully informed, to decide whether or not to take that course. Mr. Lovatt was remiss in his duty as Local Director. He should have informed the Board of Directors of the statutory provision. He did not.

There were other memoranda from Mr. Macdonald to the Society after December 18, 1975. They too related to preparation of the 1976 budget.

In the end, as a result of further negotiations between the Ministry and the Society, the Society's budget for 1976 was approved in the amount of \$688,336.00 including the provision for retirement of the deficit from 1975. The initial estimate presented to the Ministry in November, 1975 had been in the amount of \$716,160.00. The final result was that the Society had an approved budget for expenditure of about \$637,549.00 on current matters in 1976, compared with an approved budget in the amount of \$567,067.00 in 1975 when \$617,854.40 was actually spent or incurred.

Mr. Lovatt in his testimony upon the Inquiry stated that the Society was the victim of his integrity in the matter of statistics and thus in the matter of portions of its budget in each year. The crux of that complaint, as I understood it, was that the Ministry's approach to approval of budgets of

children's aid societies was based on the number of matters that were assigned particular designations by the societies.

He suggested that some of the societies would give to a matter a designation which merited a greater allotment of time, money and personnel whereas other societies would give to a matter, identical to the other for all practical purposes, a different designation meriting a lesser allotment of time, money and personnel. He said that as Local Director of the Society he complied with the directives from the Ministry as to the designations to be given to various matters and, as a result, the Society received less funding than other societies which did not comply.

There was other testimony which might seem to support Mr. Lovatt's view. That testimony related to efforts, even in the Society, to place or maintain matters in certain positions upon the days as of which statistical reports to the Ministry were prepared.

Mr. Macdonald in his testimony denied that the Society suffered because of Mr. Lovatt's decisions as to the designation to be given to any matter. Mr. Macdonald said that, in assessing each society's budget submissions, the Ministry had regard only to the criteria applied by that society in past years and in the current year. He said that no society's requirements were measured in any way in relation to or by material submitted by other societies.

Mr. Macdonald acknowledged that a society's submission might be misunderstood if the society itself changed its criteria. However, if the society advised the Ministry of its changed criteria there would be no difficulty because the Ministry, in comparing the current submission with that of an earlier year, would apply the new criteria to the facts of the earlier year and thus obtain a proper basis for comparison. Even if the society did not advise the Ministry of any change of criteria it was likely that, if the change were causing substantial variations, the Ministry would observe the apparent abnormality and request and receive an appropriate explanation.

I prefer Mr. Macdonald's testimony to that of Mr. Lovatt in that regard. The position of the Society, in relation to ministerial approval of its budgets and the consequent provision of funds to satisfy the approved budgets, was not less favourable to the Society because it placed some matters in categories different from those in which other societies might have placed such matters.

I restrict that finding so that it relates only to years, such as 1976, in respect of which the Ministry sought to impose arbitrary restraints measured only in relation to some predetermined matter, such as the budget for a preceding year.

In other respects I am satisfied that the position of any children's aid society in relation to any other society could be and was affected by the way in which its records were kept and its budget prepared and presented. In saying that I do not suggest that any society was dishonest or, in effect, cheated other societies by employing improper methods of recording and reporting its activities.

Mr. Macdonald acknowledged that fact when he testified as to the Ministry's analysis of the budget proposals for the year 1977 and its attempts then

"to be as equitable as possible and to use the guidelines that [it] had to provide the best possible distribution of money."

I am satisfied that such analysis and attempts to achieve an equitable distribution of funds among the societies entailed a comparison of each society with one or more of the others. Mr. Macdonald had testified that in respect of the 1977 budget proposals the Ministry abandoned its efforts to control budgets by imposing limits such as a fixed percentage of the prior year's budgets which it attempted in relation to estimates for the year 1976. He said the Ministry sought to impose controls as severe as those attempted in respect of 1976 budgets, but, in respect of the 1977 budget proposals, the Ministry sought "to take a more rational approach to each individual budget."

In my view it would then be the responsibility of the local director of each children's aid society to prepare the budget of his or her society and to employ, as favourably as possible to the society, the material available from the files and records of the society maintained in keeping with the requirements and standards, if any, of the Ministry. Conversely, it would be the Ministry's responsibility to every other society to ensure that the files and records of the society whose budget was being considered were maintained as required by the Ministry.

I am supported in that opinion by the testimony which related to the procedure entailed in obtaining the Minister's approval of the Society's budget for 1978. That demonstrated to my satisfaction that two local directors preparing and presenting a budget in respect of one children's aid society could achieve quite different results. Both would have stayed within the proper limits imposed by the Ministry. The one who achieved the better results would simply have better utilized the information available from the files and records of the society. The one who achieved the poorer results made the poorer use of the same information.

Mr. Lovatt testified that for some years prior to 1978 he had been concerned about the levels of staffing and financing of the Society. Some of the exhibits produced upon the Inquiry support his testimony.

I am satisfied that Mr. Lovatt did have those concerns. The oral testimony and exhibits upon the Inquiry satisfy me that those concerns were valid. Mr. Lovatt's failure was his inability, in almost every instance when he tried to do so, to demonstrate that his concerns were well-founded.

Mr. Lovatt testified that, even before his appointment as Local Director of the Society in 1968, the Society had had expenditures much lower than other comparable societies. The amount of monies payable by the Ministry to a society was, for most practical purposes, directly related to its approved expenditures.

One of Mr. Lovatt's efforts to correct that perceived disparity between the funds provided for the Society and those provided for other societies occurred in December, 1974 in the preliminary stages of consideration of the Society's proposed budget for the year 1975.

He wrote to Mr. Macdonald explaining some of the reasons for differences between the estimates of certain items for 1975 from those for 1974.

The final two paragraphs were in the nature of general comment upon the anticipated financial needs of the Society and upon the anticipated increase of the need for its services. He wrote as follows:

"This agency is very much aware of just how far we are behind in level of financing. The enclosed figures, taken from recent O.A.C.A.S. communications, show that, in comparison to all other societies serving populations between 90 and 130,000, our 1973 actual was \$102,000 below the next lowest and our 1974 Budget Estimate was again \$86,000 lower. Realistically, therefore, we do not expect opposition to our modest 1975 increase, which represents an increase of only 14% over 1974 estimated actual.

You may be aware that Lambton County is facing a tremendous increase in population following the expansion in the chemical industry. The increase is predicted to start in the Spring of 1975 and could reach a total of 54,000 more people by 1980. These figures are taken from official municipal planning department reports. We are therefore developing a brief to submit to you on our plans for expanding staff and facilities to deal with this expected increase, for inclusion in the 5 year forecast commencing 1976."

The "enclosed figures" he mentioned were as follows:

Societies covering population of 90 - 130,000

	<u>Pop.</u>	<u>Staff</u>	<u>Actual 1973</u>	<u>1974 Estimate</u>
Algoma	110	30	\$686,043	741,640
Brant	99	40	\$820,946	998,173
Frontenac	100	41	\$572,711	630,638
Hamilton RC	115	48	\$1,023,274	1,242,050
Hastings	97	35	\$582,920	657,113
Kent	99	25	\$542,886	570,269
Lambton	112	23	\$441,499	484,257
Stormont	97	22	\$580,587	628,312
Wellington	113	40	\$728,710	811,902

Mr. Lovatt testified that this and other efforts by discussion with Mr. Charko failed. He said the Ministry's position, as expressed to him, was that comparisons of children's aid societies could not be based solely upon the size of the population served by each.

I accept Mr. Lovatt's testimony in this area. But that letter of December 17, 1974 is an example of what might have been expected of Mr. Lovatt bearing in mind the very little time which, on his own testimony, he spent upon hastily preparing reports and material for the Board of Directors of the Society and its committees.

He knew that the Ministry recognized that size of population served was not the only factor to measure the needs of the Society. His own testimony was that officials of the Ministry stated to him that the needs of the societies varied and that geographic area and population served were not the sole determinants of a society's needs. He also said that his efforts to persuade the Ministry as to the Society's needs were futile.

There was no testimony that that caused him to set about preparing more and better material to try to persuade the Ministry as to the needs of the Society. From the testimony upon the Inquiry it would seem that there were several other factors that might have been considered. They would include demographic information sufficient to reflect the number of births, the ages and sex of children in the

community, changes in the size of population and the rate of change, the nature of industrial and other employment, unemployment figures, any particular ethnic or cultural consideration, the incidence of conditions such as alcoholism or emotional or mental illnesses which might affect demands upon the Society, the presence or absence of facilities to enable the Society to treat cases coming to its attention, the availability of foster homes and the location of centres of population within the County of Lambton and the location of the Society's offices and other facilities in relation to those centres of population.

He might also have supported his claim by including, if they were then available, comments such as were made by Judge Kent to Mr. Zwerver criticising the Society's conduct of court matters. That might have removed any supposed objection to the Society's expenditure of funds to obtain legal services.

In that last matter I am not satisfied that the Ministry refused any properly presented request for provision of funds for legal services. I am satisfied that most children's aid societies do avail themselves of such services and not, as the Society did in 1976, by encroaching upon the Society's private funds not subject to external budgetary controls. I am not satisfied that the Society even sought to have a provision for legal services included in its budget.

Mr. Lovatt was responsible for no such provisions having been made in 1975 and 1976. That had no particular bearing upon the finalization of the court proceedings in respect of Kim. At the meeting of the Board of Directors of the Society on January 6, 1976 the Board of Directors made the sum of \$2,500.00 available to Mr. Lovatt to obtain legal assistance "in his judgement".

The trial of the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act was held on February 23, 1976 and, subject only to imposition of sentence, it was completed that day. The Society's application in respect of Kim was heard on February 25, 1976.

There was no testimony that Mr. Lovatt exercised his "judgement" to seek legal assistance in respect of either the trial or the hearing or in respect of any of the ramifications of Kim's case, such as the restriction upon Mr. Carter's activities imposed by Mr. Higgins and accepted by Mrs. Harvey and Mr. Carter. I am satisfied he did not seek any legal advice in respect of any matter relating to Kim during her lifetime.

Mr. Lovatt is responsible for any harm that may have befallen Kim because the Society did not obtain any necessary legal service. That responsibility existed even before January 6, 1976, but its existence is clearly identified by the action of the Board of Directors of the Society on that date.

That action was taken by the Board of Directors after, as recorded in the minutes of the meeting,

"Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance."

Thus Mr. Lovatt was aware that the staff of the Society felt some need for legal assistance in relation to "some cases of child abuse." He also knew that, if not the sole such case then current within the Society, Kim's was the most serious and was one in which a solicitor acting for the parents was effectively preventing the Society from performing some of its duties. But he made no inquiry to determine if he should exercise his "judgement" and authorize the expenditure of funds for legal services.

That was another example of Mr. Lovatt's failure to fulfill what was reasonably expected of him.

I cannot imagine any case more deserving of at least consideration as meriting an exercise of Mr. Lovatt's judgement that legal advice and assistance to the Society were necessary and desirable so as to obtain a proper result.

Kim should have had that consideration. She did not receive it.

The Society should have obtained legal advice and assistance to try to enable it to fulfill its duties and obligations to Kim. It did not.

Mr. Lovatt is responsible for both of those failures.

I can infer only that if he thought about seeking legal advice, he decided against it. In any event he provided a further demonstration of his lack of qualifications for the position of Local Director of the Society.

In 1975 Mr. Lovatt was able to satisfy the Ministry as to the Society's need to enlarge its staff. He wrote to the Ministry on March 27, 1975 and enclosed a brief which had been approved by the Board of Directors of the Society. That brief did approach the problems of the Society by reference to several of the factors I have noted earlier.

It referred to the increasing age of children served by the Society and the consequent greater difficulties encountered, particularly in relation to foster homes and adoption.

It referred to the increasing need for service to unwed mothers and their children, in part because of an increase in public acceptance of those mothers keeping their children.

It included references to the municipal Planning Board's projections of growth of population and industry and the rate and time thereof with especial reference to the first wave of such growth being in construction. The brief suggested that construction workers were mobile and, for the Society at least, were a "high risk" population.

It referred to the special demands upon the Society for service to Indian Reserves, some of which were long distances from the City of Sarnia.

It referred to local centres of population outside of the City of Sarnia and their possible

growth and thus the need for local offices of the Society to serve them in the future.

Statistical material was attached to the brief to show the Society's position in relation to several other societies in the matter of size of budget, size of population served, per capita cost, the apportionment of expenditures among child care, other services and administration and the ratios of children in care and society staff to population served. There were also some statistics comparing the caseloads and workloads within the Society in the years 1973 and 1974.

The brief stated that the material provided would establish the Society's need for another one and one-half social workers. In fact the Ministry authorized the employment of two. Two were employed by the Society in December, 1975. One was Mrs. Lo.

It would seem therefore that Mr. Lovatt's earlier efforts were unsuccessful because he had not prepared a proper base for his submission. When he had established that base by his submission in March, 1975 he received a favourable response from the Ministry.

The progress of the Society's budget for the year 1978, from preparation of the initial estimates by Mr. Lovatt in late 1977, through various presentations to the Ministry and the Ministry's denial of approval and then finally the preparation of a revised proposal by Mr. McCabe and Mr. Zwerver and its ultimate approval by the Ministry in mid-1978, was another demonstration of Mr. Lovatt's inability to deal effectively with the Society's budgetary and financial matters. That was so despite his interest in the subject matter and his professed and demonstrated abandonment of other responsibilities to apply himself to it.

Mr. Zwerver's report to the Board of Directors and his testimony upon the Inquiry was to the effect that in March, 1978 the staff of the Society complained about what they regarded as unduly large workloads and pressures. He said that was so even though the statistical material available within the Society indicated that the Society had a

sufficient number of staff to meet the requirements of the caseload.

That latter observation by Mr. Zwerver draws attention to the second paragraph of the Society's brief sent to the Ministry with Mr. Lovatt's letter of March 27, 1975. That paragraph speaks of the Society's meeting "increasing demands with a relatively stable staff." It went on to say that "since the onset of inflation in early 1969" the Society, like other institutions in the public sector, was required to practice restraint and to rationalize its operation. It said the Society's staff had met that requirement "with innovation and dedication, but the limit has been reached." It continued then to give some statistical information. The concluding sentence is the most relevant to what Mr. Zwerver found in March, 1978. It was:

"The caseload count of each month does not give an accurate picture of the actual workload."

There was no explanation of that statement to indicate in what way the "picture" was not accurate. Even in the face of that statement one of the appendices attached to the brief is entitled "Caseload Statistics 1973, 1974."

It seems a little unusual to present statistics supposedly in support of a submission and at the same time to acknowledge they "[do] not give an accurate picture" of what they are supposed to illustrate. In light of such a statement the statistics were meaningless and useless.

Mr. Lovatt had signed the Society's brief to the Ministry in March, 1975. He was then aware that there was something wrong or misleading in the records and statistics maintained by the Society. Even then he recognized that "the limit [had] been reached" by the staff. While he did obtain approval of the employment of two additional workers in 1975 he had permitted the same sort of situation to exist three years later in March, 1978.

There was no testimony that Mr. Lovatt made any effort to correct the internal system of the Society which led him to acknowledge that the

statistics did not correctly illustrate the problem. Presumably the same unreliable system existed in 1978 when Mr. Zwerver arrived. All of that is another indication of Mr. Lovatt's incompetence or ineptitude.

Mr. Zwerver testified that he caused a "proper statistical system" to be established in the Society. From that system Mr. Zwerver soon obtained information which satisfied him that the staff of the Society was not sufficiently large to meet the actual demands upon it. The material placed into the new statistical system showed that the staff of the Society had been doing a much greater volume of work than the former statistical system had indicated.

On the basis of Mr. Zwerver's testimony and that of other witnesses I am satisfied that the establishment and maintenance of proper records and statistics and the ability to obtain accurate and appropriate information therefrom are as necessary to the successful operation of a children's aid society as they are to any other complex undertaking.

Accurate information is necessary to enable the administration or management of a children's aid society to establish a solid basis for its estimates of its needs in the future. Those needs might be for an enlarged staff or for the employment of persons with particular qualifications or skills. The needs might be for increased financial support.

There is no evidence to show when the Society had adopted the statistical system which Mr. Zwerver found in 1978. It may very well have been established even before Mr. Lovatt became Local Director of the Society in 1968. But he did continue to leave it unchanged for years after acknowledging its deficiencies.

In mitigation of this criticism of Mr. Lovatt, I acknowledge that one of the many abortive efforts of the Ministry involved work upon a Management Information System. The Society expended some effort in that work. It all went for nought.

That is of interest only because of Mr. Macdonald's testimony as to how the Ministry applied or used various forms of statistical information supplied by the societies. He said that information

about "caseloads" had provided "a very rough general guideline" in relation to consideration of budget proposals. The Ministry was neither "scientific" nor "mathematical" in the application of that guideline, but sought to enable each society to maintain staff and facilities sufficient to meet the demands upon it. The absence of uniform or consistent terminology and definitions and interpretations thereof caused difficulties.

It was here that Mr. Macdonald explained that in budgeting matters the Ministry did not "extensively" compare one society with others in terms of case loads. The Ministry did however use the statistics provided by the individual society in prior years to assess its current needs. That was based on a belief that each society would be consistent in its own terminology, definitions and interpretations.

That became especially so in the years subsequent to 1975, the year preceding the Ministry's initial programme of restraint. Because of the introduction of restraints the Ministry decided to use the material and statistics of the year 1975 as a basis for assessment of each society's needs in subsequent years. The Ministry developed, for each society, a number of ratios involving the number of persons on its staff and the number of cases handled by it in the year 1975. Subsequent budget proposals and the corresponding ratios developed therefrom were measured against those of 1975. He said that that did not involve any comparison of the particular society with any other society.

It was against that background of the Ministry's procedures that Mr. Lovatt, in 1977, began the process of preparing and submitting estimates and a proposed budget for the year 1978.

On November 22, 1977 the Board of Directors approved the first budget document prepared by Mr. Lovatt for 1978. It showed that the Society estimated its expenditures in 1978 would be \$821,500.00 as compared with its anticipated expenditure of \$755,500.00 in 1977. That document, signed by Mr. Allen, President of the Society, and by Mr. Lovatt, was forwarded to the Ministry on November 29, 1977.

On January 12, 1978, the Ministry, over the signature of Edward Magder, Assistant Director, wrote to Mr. Allen, with a copy of the letter to Mr. Lovatt. Mr. Magder wrote that the Ministry had reviewed the document and had completed some calculations in accordance with the Ministry's previously published instructions relative to its preparation. He acknowledged that the Ministry's analysis was based only on the written submission and expressed a willingness to discuss the matter further if Mr. Allen wished to furnish any new information or to discuss the submission.

Mr. Magder wrote that the Society's workload projections were not supported by the Society's experience in 1977 and the trend over previous years. The Ministry estimated the total number of cases for 1978 at about 80% of the Society's estimate and then applied "the allowable 4% increase to [the Society's] 1977 actual expenditure."

In making its estimate of the Society's expected workload in 1978 the Ministry applied the ratios developed, as Mr. Macdonald explained, from the Society's actual experience in 1975. As a result the Ministry proposed the reduction of the Society's allocation for salaries from \$412,00.00 to \$336,486.00, a reduction of \$75,514.00.

In the same fashion the Ministry suggested reductions in the amounts proposed to be allocated for various other categories of expenditures. The total of all of the proposed reductions, including that in respect of salaries was \$96,698.00 so that the Society's budget would have been reduced from \$821,500.00 to \$724,802.00.

From the document prepared by Mr. Lovatt in November, 1977 it would appear that the Society's approved budget for 1977 was in the amount of \$755,500.00. From other material it would appear that the Society's actual expenditures in 1977 were \$743,492.00. Thus, in effect, the Ministry was proposing a reduction in the Society's annual budget.

Mr. Lovatt then set about to prepare a revised budget submission to the Ministry. That revised submission was approved by the Board of Directors of the Society on February 13, 1978 and was

submitted to the Ministry under date of February 16, 1978.

The revised submission was in the total amount of \$776,800.00, almost \$52,000.00 higher than that suggested as being acceptable to the Ministry and about \$44,700.00 lower than the Society's initial submission. The major differences in the two proposals by the Society were a reduction of \$25,000.00 in the allowance for salaries and of \$15,000.00 in the allowance for boarding rate payments. Mr. Magder's letter had suggested a reduction of the boarding rate payments by only about \$8,100.00.

That was where the budget process stood when Mr. Zwerver arrived in March, 1978. He examined the material prepared by Mr. Lovatt and concluded that the submission made on February 16, 1978 did not seek financial support sufficient to meet the demands expected to be made upon the Society in 1978. Mr. Zwerver communicated his opinion to Mr. Macdonald and the Ministry withheld any further consideration of the Society's submissions to enable the preparation of a further revised budget document. The new document would reflect changes made on the basis of more accurate statistics, projections and calculations all more nearly reflecting the estimated needs of the Society.

As a result, Mr. Zwerver and Mr. McCabe, who was then Acting Local Director of the Society, prepared a third proposed budget for the year 1978 for submission to the Ministry. It was approved by the Board of Directors of the Society and sent to the Ministry on June 27, 1978.

That budget proposal was quite different from those prepared by Mr. Lovatt in November, 1977 and February, 1978. It was in the total amount of \$848,642.00. Mr. Zwerver testified that, in his opinion, that proposed budget fairly and accurately reflected the estimated needs of the Society in 1978. The Ministry were of a similar opinion and the Society's budget was quickly approved in the form submitted over Mr. McCabe's signature.

I accept Mr. Zwerver's testimony that he would not have sought approval of the budget proposal if he had not been able to justify the estimates.

There would appear to be no useful purpose served by any more detailed analysis of the differences among and between the two budgets prepared by Mr. Lovatt, the original position of the Ministry and the final budget prepared by Messrs. McCabe and Zwerver and approved by the Ministry. Those of the readers of the Report who may be interested in such details will find in Schedule 2-Z to the Report a table prepared in much the style of the attachment to Mr. Magder's letter and showing the figures corresponding to the various categories and contained in the four documents.

For brevity and ease I have written as if approval or variation of a budget submitted by a children's aid society was by the Ministry. Under The Child Welfare Act the authority to approve or vary such a budget submission is vested in the Minister of Community and Social Services and not in the Ministry.

A quick perusal of Mr. Lovatt's first proposed budget for the Society for 1978 and a comparison of it and the budget finally approved by the Ministry, would indicate that in some way he had managed, in the first proposal, to make a fairly accurate assessment of the Society's needs in terms of the total amount of money required. It must be remembered that it was prepared in November, 1977 whereas the final budget proposal was prepared in June, 1978 after almost one half of the year had passed into history. The history of that half year provided information and material for a more accurate prediction of the total year's experience.

That would indicate to me that Mr. Lovatt was perhaps rather instinctively aware of what was happening within the Society. However, he had not established a proper system for the maintenance of records from which statistics could be drawn to support or verify his awareness.

In the alternative, if the material was available from the records, as it appears to have been for Mr. Zwerver and Mr. McCabe, Mr. Lovatt had not developed a means of extracting, assembling and presenting it so as to persuade others as to the validity of his statement of the projected needs of the Society.

In my view Mr. Lovatt's duties required that the appropriate systems be established to record information and to keep it available for use as required. In addition, Mr. Lovatt was required to ensure that the Society had the means of extracting appropriate information from such records and then assembling and presenting it to illustrate or support any submission by the Society. I do not mean that he personally should have done all of that, but I do say that he should have ensured that it was done. He did not do it. Thus he did not fulfill his responsibilities as Local Director of the Society.

On the strength of Mr. Zwerver's testimony, which I accept, I am satisfied that the budget proposal prepared by Mr. McCabe and him in June, 1978 conformed to the directives or guidelines issued by the Ministry with reference to the preparation of budget submissions for 1978. It complied with all of the Ministry's arbitrary restraints in certain areas. In areas where their estimates exceeded Mr. Lovatt's, Mr. Zwerver and Mr. McCabe had assembled statistical data to support their estimates and the special needs of the Society. They adequately and properly demonstrated the Society's need for more funds.

I am satisfied that, if Mr. Lovatt had submitted a budget proposal as well prepared and documented as that submitted by Mr. McCabe and Mr. Zwerver on behalf of the Society, it would have been approved by the Ministry.

That was but another example of Mr. Lovatt's failure to perform his duties properly.

I accept Mr. Zwerver's testimony that the statistical material for the Society's operations in 1977 did not accurately reflect the full extent of those operations. The statistical material was inadequate or inaccurate. Mr. Zwerver gave some examples.

I have already mentioned that he said the statistics did not support the complaints of the staff of the Society as to oppressive workloads. As a result he established a case management information system with a statistical component as well as the case management component.

The budget proposal approved by the Ministry provided for the employment of three additional workers. It had been supported by good statistical material. That satisfies me that at least in early 1978 the Society did not have sufficient staff to perform its functions. The number of new positions created in mid-1978 leads me to infer that the shortage of staff existed in one or more years prior to 1978. Mr. Lovatt had been unable to produce material to justify his belief and so was not properly performing his duties.

That complaint by the staff led Mr. Zwerver to inquire of Mr. Lovatt as to the methods employed by the Society to "count things." Mr. Lovatt's response was that he really looked to Mr. Zwerver "to develop a better way of counting things" so as to support Mr. Lovatt's previously expressed argument for additional staff. "Things" to be counted included cases and some of the particulars thereof, such as date of opening and various types of service provided in relation thereto.

On the basis of that testimony I am satisfied that Mr. Lovatt in March or April, 1978 was aware of the need for improved methods of "counting things." Accurate "counts of things" would seem to be basic and essential ingredients of any system intended to provide accurate and reliable statistical information. I am satisfied too that Mr. Lovatt knew or should have known of this deficiency within the Society long before March, 1978. But Mr. Lovatt had not instituted any procedures to obtain an accurate "count of things." He should have. Again he failed to perform his duties.

Mr. Zwerver mentioned another example of inadequate statistical material. That related to the numbers of children in the care of the Society and the number of families served by it. It would seem that by the very nature of a children's aid society it would be basic and essential to the Society to have accurate records of the numbers of such children and families. Any inadequacy of such basic records would reflect a basic inadequacy in Mr. Lovatt's qualifications to fulfill his duties.

Mr. Zwerver commented upon Mr. Magder's letter. He agreed with the basic theme of Mr. Magder's comments that the statistical data submitted by Mr. Lovatt was deficient and did not support the Society's submission for increased funds.

He confirmed that upon the basis of the material for the year 1975, upon which the workload factor of the Society was calculated and established, the trend of the workload in the Society in 1977 was downward. But Mr. Lovatt's budget proposals were contrary to that statistical information and showed an upward trend. In the light of the statistical material relied upon by Mr. Lovatt, Mr. Zwerver was not critical of the Ministry's position as expressed by Mr. Magder. Conversely, I would view it as an expression of criticism of Mr. Lovatt.

Mr. Zwerver testified that the records maintained by the Society were "fairly deficient." He said that the volume of matters dealt with by the Society was much higher than recorded. He suggested that, if that were the situation in 1977 and 1978, it might very well have been so in earlier years as well, including 1975. Thus in all of those years the Society might have required more staff than was indicated by its own records and statistics. That would of course mean that, through no fault of its own, the Ministry had established ratios based on faulty information furnished by the Society in respect of its operations in 1975. As Local Director of the Society in all of these years Mr. Lovatt is responsible for the existence and maintenance of "fairly deficient" records.

Mr. Zwerver then moved to a more detailed examination of the budget proposals submitted by Mr. Lovatt. Each column of what is reproduced in Schedule 2-Z to the Report, except the columns representing the Ministry's initial response in January, 1978, is merely one column of one page of a nine page document representing the full budget presentation.

He said that, while Mr. Lovatt's submissions had expressed the totals of various categories set forth in the forms, they did not provide the essential information as to the component parts of the totals. So Mr. Zwerver sought to obtain

the material used in preparing the estimates. He wanted the detailed information which would be required by the Ministry to enable it to make its decisions upon the proposals. The Ministry had requested him to provide the detailed information which was not contained in the material furnished by Mr. Lovatt.

I infer from that testimony that Mr. Lovatt had not properly prepared the submissions to the Ministry. That too was a failure to perform his tasks and these tasks were in the area over which he maintained close control.

Mr. Zwerver said that in preparing their submission Mr. McCabe and he had looked at the available material with reference to the budgets of some other children's aid societies. He acknowledged that it was difficult to make comparisons because of the paucity of available information. However, in general terms in comparison with other children's aid societies serving comparably sized communities with similar workload expectations, the Society's budget was low expressed in terms of monies to be expended. Mr. Lovatt's second proposal was the fifth lowest in Ontario on the basis of per capita cost.

He acknowledged that it took time to assemble the information requested by the Ministry, but the Ministry was understanding of the time spent.

In what I view as a rather damning indictment of Mr. Lovatt, Mr. Zwerver spoke of one category of the budget in which Mr. McCabe and he had felt it necessary to increase the amount suggested by Mr. Lovatt. That was the provision for office expenses. They increased the amount from \$18,000.00 suggested by Mr. Lovatt in both of his submissions to \$21,965.00. That was to enable the staff of the Society to have supplies, as basic as pencils and writing pads, which had not been available when Mr. Zwerver came to the Society in March, 1978.

Mr. Zwerver spoke to Mr. Lovatt about the absence of such supplies. Mr. Lovatt's response was a clear acknowledgement that he knew of the problem of inadequate supplies. He said simply that the supplies were not available because the Society could not afford them. It was ironic that that response

was given less than three months after the end of the year 1977 during which the Society spent about \$12,000.00 less than its approved budget. That is even more significant when examined in the light of testimony to the effect that, while the Ministry, in its review of budget proposals, examined the proposals line by line, the ultimate approval of the budget was for the total amount thereof and the Society was free to move monies from category to category as it required.

I am satisfied Mr. Lovatt was aware of the shortage of supplies and he was aware of the ability of the Society to acquire them. He chose not to exercise that ability. Such penny-pinching may have permitted Mr. Lovatt to derive some satisfaction from achieving a low per capita cost. But he did so at a cost to the Society, its staff and its clients. The cost was not measureable in terms of money. It was measureable in terms of service and morale. That was another clear instance of his failure to perform his duties adequately.

Another area of increase related to staff training and education. Mr. McCabe and Mr. Zwerver were able to persuade the Ministry of the need. In view of his admissions as to the inadequacies of the knowledge and skills of the staff of the Society, Mr. Lovatt should have been aware of the need for more training. Again he failed the Society and its staff and thus its clients.

I have already commented on the increase in the provision under the heading "Boarding Rate Payments." Mr. Zwerver said that was primarily the result of an increase in the number of children who were in the care of the Society. He said Mr. Lovatt's original submission was based upon an estimate that 125 children would be in the care of the Society each month. On the basis of their experience in the Society in 1978, Mr. McCabe and Mr. Zwerver increased that estimate from 125 to 138, an increase of slightly more than ten per cent. Mr. Zwerver said that was not a matter of any problem with maintenance of records. It was simply that more children than planned for came into the care of the Society.

It should be noted that in his letter to the Ministry on March 27, 1975, Mr. Lovatt had mentioned just that sort of result from the projected growth of population and industry and construction. It would seem Mr. Lovatt had not himself kept abreast of what was developing in the City of Sarnia and the County of Lambton. His submissions in 1975 had enabled the Society to employ two more workers. There is nothing to suggest that the Ministry would not have approved, for 1978, a request for more funds to employ more staff if the request were supported by reliable and persuasive material. Mr. Zwerver and Mr. McCabe obtained approval of a budget for 1978 which envisioned employment of three additional workers.

Mr. Zwerver acknowledged that on the basis of the trend downward of the number of children in the care of the Society, the Ministry's reduction of that budgetary provision was appropriate. That reduction reflected 118, rather than 125, as the number of children who were expected to be in the care of the Society each month.

Another area in respect which Mr. McCabe and Mr. Zwerver increased the amount proposed by Mr. Lovatt was that under the heading "Health and Allied Services." In money it is not a large item, but it may have some significance in and relationship to Kim's case. This is the heading under which medical attention is provided for children in care. I presume this would include medical examinations.

A programme of medical examinations might have saved Kim. In respect of Kim there was no testimony that anyone thought of medical examinations of her after May 27, 1976. It would seem that even after Kim's death medical services to children in the care of the Society did not loom large in Mr. Lovatt's thinking.

Another difference was that Mr. Lovatt's submissions contained no provision for a court worker. That was an area of weakness noted by the Farina Committee in its general review of the Society. I have commented upon it with specific reference to Kim's case. It would seem that Mr. Lovatt was unaware of that deficiency or chose to ignore it. In either case he is to be criticized.

Mr. Lovatt's failure or inability to prepare budgetary proposals and supporting material which properly reflected the true needs of the Society was a root cause of much of the difficulty experienced by the Society and its staff. That failure or inability led to the absence of adequate financial resources and thus to shortages of staff. That in turn led to unduly heavy caseloads for individual workers which, when coupled with other difficulties or nuisances such as lack of supplies, created an atmosphere in which poor morale of the staff was born and nurtured.

The true extent of Mr. Lovatt's failure to be effective in relation to the budgetary and financial affairs of the Society is all the more pronounced because of his persistent testimony as to his dedication of time and effort upon those affairs. It would seem he simply lacked the necessary knowledge and skill.

There was not sufficient testimony upon the Inquiry to enable me to identify any direct relationship between Mr. Lovatt's failures in his duties related to financial and budgetary affairs and the manner in which Kim's case was managed by the Society. The direct testimony was that there was no relationship between the two. But there was, throughout the testimony of Mr. Lovatt and Mrs. Harvey, what I perceived to be a thread of financial restraint coupled with a philosophy of preference to maintain children in their own homes rather than in other facilities. I am unable to make any assessment of the relative weight of those two factors in the process whereby any decision was made in Kim's case.

I am similarly unable to make any assessment of the weight which the overall deficiencies of the Society may have had upon the decisions made in Kim's case. In this comment I include such things as the low morale of staff, the dissension between or among departments of the Society, the lack of knowledge and skill possessed by the staff in many areas of their responsibilities and the lack of adequate leadership and supervision by Mr. Lovatt.

In Chapter XXVI of the Report I review the role of the Ministry in Kim's life. I express criticism of the Ministry's failure to fulfill its

statutory duties to advise and supervise the Society. Mr. Lovatt in his testimony sought some refuge in that. He said that at no time during his service as Local Director of the Society did the Ministry provide to the Society support, assistance and supervision such as it provided early in 1978.

He had received assistance from the Ministry when he requested it from time to time on specific matters. In earlier years there had been annual visits by "readers," but that was discontinued in 1974. He felt that none of the comments expressed by the Ministry's staff at any time prior to 1978 indicated a state of affairs within the Society in any way approaching the state revealed by the Farina Committee and Mr. Zwerver in their respective reports to the Board of Directors of the Society and their testimony upon the Inquiry.

He testified that he was shocked and surprised by those reports, particularly as they related to lack of procedures, tensions between the two departments of the Society and low morale among the staff. On his own testimony I am satisfied that the only shock or surprise was as to the strength or depth of the criticism expressed in the reports. He knew that there were such problems within the Society. He may not have known the full extent of those problems. But, as Local Director of the Society, he should have known. That was another of his failures.

The absence of any criticism expressed by the Ministry or its staff between 1975 and 1978 does not insulate Mr. Lovatt from criticism.

Mr. Zwerver became aware of the problem of morale virtually on his first day in Sarnia. Mr. Lovatt should have been aware of it.

Mr. Lovatt knew the very limited written material which reflected the policies and procedures of the Society. He should have known they were inadequate.

Mr. Lovatt was aware of some problems between the two departments and, he testified, he had worked with the supervisors to try to resolve them.

Those matters were no less real and troublesome because the Ministry omitted comment upon them. The absence of any adverse comment by the Ministry provides no defence or excuse for Mr. Lovatt who knew or should have known that there was a basis for adverse comment by the Ministry if it had fulfilled its duties.

On all of the testimony I am unable to determine when the problems in the Society brought to public light in 1978 began or became of serious dimension. It would seem certain that the Society never had adequate written material describing its policies and procedures. It would seem probable that the problems of staff morale and of tension between the departments existed for some time prior to 1978 and even prior to 1976. By early 1976 the dominance of the Family Services Department had been established. That must have been preceded by a period of contention. I acknowledge that those two problems may have been exacerbated by the disclosures which began in December, 1977, but they must have existed long before that and Mr. Lovatt should have been aware of them and of their full dimension and significance.

In the same way I tend to dismiss the complaint which was inherent in Mr. Lovatt's testimony as to the lack of information and material upon child abuse made available to children's aid societies generally by the Ministry.

I accept Dr. Turner's view that, regardless of the presence or absence or the sufficiency or insufficiency of material from the Ministry, each social worker has an obligation to keep abreast of developments and trends within his or her own professional interests.

Certainly any social worker employed in the field of child welfare is and was obliged to be aware of developments and trends in the detection, management and treatment of cases of suspected or actual abuse of children. There was an abundance of material available. If Mr. Lovatt did not know that it existed he should have.

If, as I believe, each social worker has such a duty to keep abreast of current practices, it

is my view that the person serving as local director of a children's aid society has an even higher duty in that area.

The imposition of duties upon the Ministry and the Director appointed under The Child Welfare Act did not relieve Mr. Lovatt of his duty to provide leadership to the staff of the Society and to the Board of Directors of the Society.

In other areas of the Report I have noted observations sympathetic to Mrs. Lo in that they suggested she had been put beyond her depth when she was assigned to Kim's case. Similarly sympathetic observations might be expressed in respect of Mr. Lovatt. He was put beyond his depth when he was appointed Local Director of the Society. Unlike Mrs. Lo he had several years in the position to recognize his own limitations and to seek assistance. He did neither.

Notwithstanding any sympathy one may have for Mr. Lovatt, he must still be identified as one who bears a major share of the responsibility for the existence of circumstances within the Society which contributed so greatly to the ultimate tragedy of Kim's life.

Chapter XVI

The Role of William Higgins

William Higgins was involved in Kim's life in various capacities.

Mr. Higgins was a barrister and solicitor who conducted his professional practice in Sarnia since being admitted to the bar in 1954. His practice was general in nature, but a substantial part of it was in the area of family law. He did not at any time act for or on behalf of the Society. On occasion he did act on behalf of municipal corporations or individuals having interests adverse to those of the Society either in relation to financial matters or the care and custody of children.

In September, 1975 Mr. Higgins was retained by Jennifer Popen and Annals Popen to defend them upon the charge under section 40 of The Child Welfare Act and to oppose the application of the Society for custody of Kim. For brevity in this chapter I shall call The Child Welfare Act the "Act".

From the transcripts of the proceedings upon those two matters in provincial court it is clear to me that, from the outset, it was Mr. Higgins' opinion that the trial of the charge under section 40 of the Act should be completed before the application of the Society for custody was heard. From the testimony given upon the Inquiry by Mr. Lang, Crown Attorney, I am satisfied that he felt the two matters should be heard on the same day.

For all practical purposes Mr. Higgins prevailed. Apart from the sentencing of Annals Popen the trial of the charge under section 40 of the Act was completed before the Society's application was heard.

Neither Mr. Lang nor Mr. Higgins gave any reason for his opinion. I can only conclude that Mr. Higgins felt it would be advantageous in some way to

his clients to have a determination of the charge under section 40 of the Act before entering upon the question of custody of Kim.

In his desire to have that sequence of the two hearings, Mr. Higgins was aided by the failure of the Society, the Crown Attorney and the Sarnia Police Force to be ready to proceed on January 19, 1976 when both matters were scheduled for hearing on the same day. His objection to having the matters begun on that day and then adjourned for a lengthy period to enable Dr. Singh to testify was reasonable. Mr. Higgins testified upon the Inquiry that on occasion such adjournments, in other trials in which he was involved, had been for as much as two and a half months. Any such interruption of a trial or hearing could only create difficulty for everyone involved therein.

I am satisfied that Mr. Higgins believed his primary professional duty or obligation was to Jennifer Popen and Annals Popen. I am satisfied he felt no professional or statutory obligation towards Kim.

Mr. Higgins testified that his letter to Mr. Lang dated February 10, 1976 was written as a result of instructions he had received from his clients on February 6, 1976. He testified that he had contacted Mr. Carter at the Society immediately upon receiving those instructions so that Mr. Carter from that time on could see his clients as he saw fit. Mr. Higgins testified that at that time he informed Mr. Carter of the nature of his instructions from his clients, that is that Annals Popen would accept responsibility for Kim's injuries.

I understood Mr. Higgins to say that that discussion with Mr. Carter was similar in content to his later communication with Mr. Lang in which he set forth his proposal of a plea of guilty by Annals Popen and a withdrawal of the charge against Jennifer Popen. I gathered that he felt, and I think properly so, that the Society would be interested and involved somehow in the proceedings under section 40 of the Act.

I accept Mr. Higgins testimony that he informed Mr. Carter of his proposal for the resolution of the charges under section 40 of the Act.

Counsel for Jennifer Popen upon the Inquiry withheld any waiver of privilege attaching to communications between her and Annals Popen as clients and Mr. Higgins as solicitor. Therefore, it was not possible for me to explore the nature or basis or source of the instructions given to Mr. Higgins beyond what had already been indicated by him in his letter to Mr. Lang and in his submissions on behalf of his clients in the Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter called the "Court."

Some indication of the rationale for the instructions may be found in the first paragraph of a written statement made and signed by Jennifer Popen on June 10, 1978 in the presence of an Investigator for the Inquiry. That paragraph reads as follows:

"My husband was drinking at the time when the charge was laid under the Child Welfare Act. It would have made it easier to have Kimmy returned home to us from the Children's Aid if Annals plead guilty to that charge. This is what Mr. Higgins said, but at the same time Mr. Higgins didn't know that I was the one. He didn't know that the child was being abused by me. I never knowed he was on the Children's Aid, he never said anything like that."

That of course leaves open the question of the basis for any statement which Jennifer Popen in that document attributes to Mr. Higgins.

Mr. Higgins testified that until speaking to Mr. Carter on or immediately after February 6, 1976, he had told Mr. Carter that he was not to contact his, Mr. Higgins', clients until completion of their trial upon the charge under section 40 of the Act. He testified that he was aware of Mr. Carter's desires and responsibilities, but he felt that the existence of the charge under section 40 of the Act, which he regarded as being in a sense a criminal proceeding, was good reason to seek to prevent Mr. Carter from having contact with his

clients. From the point of view of counsel for the parents such a view is not unreasonable. That is not to say that Mr. Carter and the Society should have accepted the prohibition or restriction which Mr. Higgins imposed. Mr. Higgins testified that Mr. Carter seemed to have difficulty in recognizing that the two proceedings were different from one another.

I am somewhat troubled by Mr. Higgins' testimony that he prepared for the trial of the charge under section 40 of the Act only upon the basis of its being the result of something which occurred on August 31, 1975. He said his recollection was that until the trial on February 23, 1976 he was not aware of some or all of the earlier incidents and injuries mentioned in the synopsis of evidence read by Mr. Hibberd, the Assistant Crown Attorney. Mr. Higgins said he had prepared for the trial upon the basis that the defence to be presented on behalf of his clients would seek to satisfy the Court that the injuries Kim suffered on August 31, 1975 were caused by accident. He said that Mr. Hibberd's synopsis did not cause him to have any reservations as to who was responsible for Kim's injuries.

I am surprised that a counsel of Mr. Higgins' stature, experience and skill would not have inquired of Mr. Lang as to the nature of the evidence which might be tendered by the Crown Attorney, particularly when the information as laid by Police Constable Wyville related to the whole period of Kim's life and not only to August 31, 1975 or a short period prior thereto. There was nothing in the testimony upon the Inquiry to indicate that Mr. Lang would not have made full disclosure of the case to Mr. Higgins.

That testimony of Mr. Higgins is all the more surprising since he was retained also to oppose the Society's application for wardship. I would have expected that in connection with that matter he would have been considering more than one incident in isolation from the rest of Kim's life and care. I would also have expected that he would have inquired of Mr. Carter or others at the Society as to the evidence which the Society expected to present in support of its application. Again there was no testimony upon the Inquiry to indicate that anyone at

the Society would have declined to make full disclosure of its case if requested.

I am confident that had such a request been made by Mr. Higgins to Mr. Lang or to the Society it would have been granted.

Despite my comments upon Mr. Higgins' preparation for the trial and hearing in the Court, I share his view, as expressed in his testimony upon the Inquiry, that he achieved a good result for his clients, Annals Popen and Jennifer Popen. I would only add that the result was especially good for Jennifer Popen. His primary professional duty as a barrister and solicitor was to achieve a good result for his clients.

Others bear the responsibility for the fact that the results flowing from Mr. Higgins successful performance of that professional duty were not favourable to Kim.

Mr. Higgins testified that his submission to the Court on February 23, 1976 was really addressed to the matter of sentencing and to support his request that a pre-sentence report be obtained.

In further explanation of his submissions to the Court, particularly the portions to the effect that Annals Popen felt responsible for Kim's injuries, Mr. Higgins testified that he entered the plea of guilty on behalf of Annals Popen as a result of instructions given to him. He testified that Annals Popen had not admitted that he had caused all of the injuries.

Mr. Higgins' submission was carefully worded. It was based on written notes in his file. While it takes up about fifty lines in the transcript, really all that it amounts to is an expression of Annals Popen's feeling "probably responsible in whole or in part" for Kim's injuries. It then goes on to make, as a basis for that feeling, reference to a faulty crib and to Annals Popen's "drinking problem." Then there was reference to the good housekeeping in the home and the parents' love for and pride in Kim and Jennifer Popen's not wanting to leave Annals Popen "as a result of whatever happened." Then it goes on to suggest that perhaps

Annals Popen, when drunk, dropped Kim "rather than an abusive action."

The submission was in no way helpful to the Court in determining how or by whom Kim was injured. If anything it directed any focus of attention away from Jennifer Popen and towards Annals Popen.

In his submission Mr. Higgins did suggest to the Court that the entire matter merited investigation. Mrs. Harvey of the Society was present. She should have been alert to what Mr. Higgins was saying. Whatever he said he did not say that Annals Popen admitted causing any injury to Kim. Mr. Higgins' submission should not in any way have caused Mrs. Harvey to change her expressed opinion that Jennifer Popen was involved in Kim's injuries and was the one upon whom the greater effort by the Society's personnel should be concentrated.

Mr. Higgins' recollection was that Mr. Hibberd had requested that both Annals Popen and Jennifer Popen be assessed by a psychiatrist. In the circumstances it would seem that that was a reasonable request. The transcript of the proceedings in the Court available to the Inquiry is not complete and does not contain any reference to such a request. Perhaps by happenstance, or perhaps as a result of such a request having been made by Mr. Hibberd, the report of Dr. Curtin addressed to the Senior Probation Parole Officer and dated March 19, 1976 following his interviews with Annals Popen contained reference to an earlier interview with Jennifer Popen. Dr. Curtin enclosed with his report a copy of his consultation note resulting from that interview.

The pre-sentence report prepared to assist the Court in March, 1976 states that a copy of Dr. Curtin's report was attached thereto. I presume the consultation note with reference to Jennifer Popen was attached as well or, if not, was available to the Court and to the Crown Attorney and would have been made available to the Society if requested.

Thus in my view Mr. Higgins, in seeking to further the interests of his client Annals Popen by seeking all possible information to support submissions to be made in efforts to mitigate sentence, served the best interests of the Court, the Crown

Attorney and the Society and, indirectly, Kim by requesting a pre-sentence report. In that way the views of Dr. Curtin with reference to Annals Popen and Jennifer Popen were obtained. It was no fault of Mr. Higgins that full use was not made of the information disclosed by the pre-sentence report or that the matter was not pursued so as to get beyond the limitations and restrictions upon the validity of his opinion which Dr. Curtin recognized and set forth in his report. In my view there was no legal obligation upon Mr. Higgins to do more than he or his law clerk did on and prior to February 23 and February 25, 1976.

At about that time an unfortunate complication was added to Mr. Higgins' involvement in Kim's life. In anticipation of the annual meeting of the Society, Mrs. Harvey approached Mr. Higgins to inquire if he would be prepared to stand for election to the Board of Directors of the Society.

Mrs. Harvey had no mandate from the Board of Directors of the Society or any committee thereof to approach Mr. Higgins in this regard, but she did have Mr. Lovatt's approval. She said she did so because she was impressed by Mr. Higgins' skill in representing Kim's parents and by his aggressiveness. She described him as being "a scrapper" and "a good legal person" who would strengthen the Board of Directors after being trained and educated as a member of that Board. She said that when, after taking some time for consideration of her request, Mr. Higgins told her he was prepared to serve as a member she reported that to Mr. Lovatt. She said she had no further participation in Mr. Higgins' nomination and election to that Board.

Mr. Higgins' testimony in this area was substantially similar to that of Mrs. Harvey. He felt she had approached him about this after completion of the hearing of the Society's application for Kim's wardship on February 25, 1976.

Mr. Higgins elaborated upon this discussion with Mrs. Harvey. He said she informed him generally of the structure of the Society and its Board of Directors and the duties of the members of that Board. He said he reflected on it for a time and accepted.

The records of the Society filed upon the Inquiry show that Mr. Higgins became a member of the Board of Directors on March 2, 1976. That was the date of the annual meeting of the Society as shown by records of the Society. There is nothing to indicate that Mr. Higgins attended that meeting. He felt he had not attended any meeting of the Society until some time in April, 1976.

I am satisfied that none of those involved in this area, Mrs. Harvey and Mr. Lovatt, had any ulterior motive in proposing Mr. Higgins as a member of the Board of Directors. Clearly the nominating committee could have had no ulterior motive for there was no evidence to indicate that any member of the committee or of the Board of Directors was aware of Mr. Higgins' retainer on behalf of Kim's parents.

I am equally satisfied that Mr. Higgins had no ulterior motive in allowing his name to be put in nomination and, when elected, serving as a member of the Board.

After his election to the Board of Directors of the Society, Mr. Higgins attended various meetings of the Board and of some of its committees. I formed the impression that he was not very deeply involved in many areas of the Board's concerns, but did make a worthwhile contribution to some particular areas in which he was especially interested or in which his own skills and training were useful.

The original application of the Society for custody of Kim had been heard and the Order had been granted. By the time Mr. Higgins was elected to and began to serve on the Board of Directors of the Society, there was no indication that the Society or Jennifer Popen and Annals Popen contemplated any appeal from that Order. For all practical purposes that matter was complete.

By the same time the trial of Jennifer Popen upon the charge under section 40 of the Act had been completed and that of Annals Popen had been virtually completed. The charge against Jennifer Popen had been withdrawn. Annals Popen had entered a plea of guilty and had been found guilty. All that remained was the imposition of sentence which was

done on March 29, 1976. No appeal was contemplated or taken.

I am satisfied that Mr. Higgins' retainer by Annals Popen and Jennifer Popen upon the Society's application was completed, fulfilled and concluded on February 25, 1976. His retainer by Jennifer Popen upon the charge under section 40 of the Act was completed, fulfilled and concluded on February 23, 1976. His retainer by Annals Popen upon that charge was completed, fulfilled and concluded on March 29, 1976.

Apart from involvement in that matter of sentence Mr. Higgins had no involvement or connection with or retainer by Jennifer Popen and Annals Popen or either of them from February 25, 1976 until after Kim's death on August 11, 1976. He was retained by Jennifer Popen in connection with the charge of manslaughter which was ultimately laid against her and Annals Popen. Annals Popen retained other counsel in connection with that charge.

Mr. Higgins appeared on behalf of Jennifer Popen in connection with that charge. Her trial was completed when having changed her plea to guilty, she was found guilty on December 5, 1977 and was sentenced on December 21, 1977.

Mr. Higgins knew that until her death Kim remained a ward of the Society.

At no time did Mr. Higgins formally or informally advise the Board of Directors of the Society or any member thereof or any officer of the Society that he acted for Annals Popen and Jennifer Popen or either of them in any of these matters. There was no evidence that any member of the Board of Directors was aware that Mr. Higgins was engaged in any matter in which the Society was involved, even peripherally. There were no evidence that any member of the Board of Directors was aware of the Society's involvement with Kim's family.

Mr. Lovatt, Local Director of the Society, knew that Mr. Higgins acted for Jennifer Popen and Annals Popen in the Court until March 29, 1976. Mrs. Harvey, Mrs. Lo and Mr. Carter also knew that. I would presume they knew he acted for Jennifer Popen

after Kim's death. I would presume they knew of Mr. Higgins' election to the Board of Directors of the Society.

At no meeting of the Board of Directors of the Society which he attended did Mr. Higgins declare a conflict of interest as a result of his retainer by Jennifer Popen and Annals Popen or either of them. There was nothing to indicate that any matter dealt with at any such meeting related to Kim or could affect the management of her case by the Society or the involvement of the Society with Jennifer Popen and Annals Popen.

I am satisfied that, apart from his conduct of the defence of Jennifer Popen and Annals Popen upon the matters in the Court, Mr. Higgins played no part in the management of Kim's case by the Society during her lifetime.

Mr. Higgins' conduct of that defence did create some difficulty for the Society's personnel, particularly Mr. Carter. As a result, Mr. Carter did not have as much contact with Kim's family as he might have liked to have had. I do not find any fault with Mr. Higgins in that regard. He perceived his acts for and advice to his clients, Kim's parents, as being beneficial to their interests in the various proceedings. It was not his fault that the Society and Mrs. Harvey and Mr. Carter permitted Mr. Higgins to maintain that limitation upon Mr. Carter's contact with his clients.

In early February, 1976, Mr. Higgins removed that limitation. So far as Mr. Higgins was concerned, Mr. Carter was then free to contact Kim's parents.

I am satisfied that Mr. Higgins did not in any way influence or participate in the decision by the Society's personnel to return Kim to her home. That decision was effectively made by Mrs. Harvey for the Society by late February, 1976 and was finalized by Mrs. Harvey and others in early May, 1976.

Despite the testimony of Mrs. Myers as to concerns within the ranks of the Society's staff that pressure had been exerted to bring about Kim's return, I am satisfied that Mr. Higgins did not exert

any such pressure on anyone. Mr. Higgins denied that he had. I believe him. Mr. Lovatt and Mrs. Harvey denied that he had exerted any pressure other than a proper defence of his clients. I accept that testimony.

Mr. Higgins impressed me as a vigorous and forceful person with a confident and assured manner. It may be that some of the Society's personnel allowed themselves to be influenced by that, but there was no evidence upon the Inquiry to support that conclusion.

I assume that until the conclusion of proceedings in the Court there were informal discussions between Mr. Higgins and Mrs. Harvey and other personnel of the Society in the halls and corridors of the courthouse. Probably some of those discussions related to Kim and the management of her case by the Society.

I accept Mr. Higgins' testimony upon the Inquiry that Mrs. Harvey did not at any time tell him that Kim would be returned to her home. I accept his testimony that, from the way the proceedings in the Court developed, he presumed that Kim would be returned to her home if Annals Popen and Jennifer Popen complied with the directions of Judge Nighswander and the Society. That was a reasonable and valid presumption.

I accept Mr. Higgins' testimony that after he became a member of the Board of Directors of the Society he did not discuss the issue of Kim's return with Mrs. Harvey or Mr. Lovatt.

Upon the Inquiry there was considerable testimony upon the issue of Mr. Higgins' obligations as a member of the Board of Directors of the Society. There was a suggestion that his retainer by and his acting for Jennifer Popen and Annals Popen or either of them, in the Court and later upon the manslaughter charge, created a conflict of interest or, at least, the appearance of a conflict of interest.

Any such conflict of interest or appearance thereof could not arise before Mr. Higgins' election to the Board of Directors of the Society on March 2, 1976 or later in March, 1976. By then all that

remained of the proceedings in the Court was the matter of Annals Popen's sentencing which was completed on March 29, 1976. While interested in it, the Society was not a party to that proceeding. I accept Mr. Higgins' testimony that he did not attend any meeting of the Board of Directors of the Society until April, 1976.

I do not perceive that any conflict of interest existed for Mr. Higgins between March 2, 1976 and March 29, 1976 when the proceedings in the Court were completed and his retainer by Jennifer Popen and Annals Popen was completed. During that period of time Mr. Higgins attended no meeting of the Board of Directors and took no part in the affairs of the Society.

At worst Mr. Higgins used questionable judgement in not advising his fellow directors of his involvement in Kim's case. It would have been wise for him to have done so promptly after his election to the Board of Directors. If he did use questionable judgement, he was not alone. Neither Mr. Lovatt nor Mrs. Harvey advised the Board. Their error in judgement was greater than Mr. Higgins. Even if Mr. Higgins did use questionable judgement in that area nothing detrimental to Kim flowed from it and the management of her case by the Society was not affected by it.

I take a different view of Mr. Higgins' position from the time he was retained by Jennifer Popen in August, 1976 in connection with the investigation by the Sarnia Police Force into Kim's death and the resulting charge of manslaughter.

I accept Mr. Higgins' testimony that he learned of Kim's death when it was reported in the newspaper. I accept his testimony that he was retained by Jennifer Popen on August 23 or 24, 1976.

From his acceptance of that retainer until the conclusion of Jennifer Popen's trial upon the charge of manslaughter on December 21, 1977, and so long thereafter as he continued to render any service and advice to her in connection with the matter Mr. Higgins was, in my view, in a position where his personal interests and obligations as a member of the Board of Directors of the Society were, or appeared

to be, in conflict with his professional interests and obligations as Jennifer Popen's solicitor.

The Society was not directly concerned with the possible result of Jennifer Popen's trial, that is her guilt or innocence. At the time of her death Kim, was by order of the Court, in the care and custody of the Society although she had been returned to her parents' home. The Society was thus directly concerned with the investigation into the circumstances surrounding her death. The management of Kim's case by the Society almost certainly would be drawn into that investigation and any resulting trial. In the result, it was.

I am not to be taken as meaning that Mr. Higgins could not have resolved the difficulty by appropriate action and disclosure of his position to the Board of Directors of the Society.

It is apparent that the Board of Directors of the Society, as a Board, and those members thereof who testified upon the Inquiry, were not aware in August, 1976 that, when Kim died, she was in the care and custody of the Society. As individuals and as the Board, they learned of that during the trial of Jennifer Popen and Annals Popen for manslaughter.

In my view, Mr. Higgins, as a member of the Board of Directors of the Society, owed a duty to the Society and its Board of Directors to inform them that, when Kim died, she was in their care and custody. He should have done so when he saw the item in the newspaper reporting her death. He should have known that the Society was likely to be criticized at some time for its management of Kim's case in general and particularly for having returned her to her parents' home. That criticism did come. It was expressed publicly. It was well-founded.

Mr. Higgins did not advise the Board of Directors of the Society or any member thereof or any officer of the Society of the fact that Kim was a ward of the Children's Aid Society when she died. He knew it. He would not have breached any confidence of his client, Jennifer Popen, to have informed the Society of the fact. The information was public in the sense that it formed part of the record of a proceeding in the Court in which the Society had been

a party. In my view, he would not have adversely affected Jennifer Popen or her defence of the charge of manslaughter by informing the Board of Directors of the Society of that fact.

Again, Mr. Higgins was not alone in his failure to inform the Board of Directors of the Society of Kim's status when she died. The Society's personnel who were involved in Kim's case were aware of the fact. They remained silent. Although Mrs. Harvey advised Mr. Allen of Kim's death while a ward of the Society he was left with the impression that it was an accidental death.

By remaining silent and not informing the Board of Directors of the Society of Kim's status at the time of her death, Mr. Higgins did a disservice to the Society and its Board of Directors. It had no effect upon Kim. She had died. It did not advance the interests of Jennifer Popen.

The disservice to the Society and its Board of Directors may have been only temporary, but it certainly led to criticism and embarrassment. Perhaps it has also led to a good result. The Society has been purged and, hopefully, improved.

Mr. Harry Zwerver in his testimony said that when he was appointed to administer the Society in early 1978 he was unable to assure the Board of Directors that there was not then still the possibility that there was another child in the care of the Society similarly exposed to the same dangers as those to which Kim had been exposed. Hopefully that possibility has been decreased as a result of the criticism and embarrassment of the Society expressed in 1977 and subsequently.

The criticism and embarrassment of the Society in part led to the Inquiry. Hopefully the Inquiry and this Report and whatever may flow from them will be beneficial to children elsewhere in Ontario as well as in Sarnia and the County of Lambton.

Mr. Higgins in testifying upon the Inquiry seemed unable to perceive that a situation of conflict of interest might exist. He seemed to feel that the interest of the Society in the matter ended

with Kim's death. With respect and for the reasons I have indicated, I disagree to the extent I have set forth.

Even if there were not a situation of conflict of interest, from about August 23, 1976 Mr. Higgins used questionable judgement in failing to inform the Board of Directors of the Society. It had no effect on Kim's life. It may have had an effect on some other child's life.

Another question as to Mr. Higgins' role related to the possible application of section 41 of the Act. It was suggested that when Mr. Higgins was retained by Annals Popen and Jennifer Popen in September, 1975 he received information that Kim had been physically ill-treated and was in need of protection. It was suggested that the provisions of section 41 of the Act imposed upon Mr. Higgins a duty and obligation to report that information to a children's aid society or Crown attorney.

Upon a strict reading of section 41 of the Act, and particularly sub-section 2 thereof, that suggestion would appear to be well-founded only if the information given to him by his clients was sufficient to give him reasonable and probable cause to believe that Kim had been physically ill-treated or was in need of protection.

Nothing which Mr. Higgins stated in the Court reveals much as to the nature of the information which he did receive. Jennifer Popen's refusal upon this Inquiry to waive the privilege attaching to her and Annals Popen's discussions with Mr. Higgins in relation to the proceedings in the Court prevented counsel from obtaining any such particulars from Mr. Higgins during the Inquiry.

Thus I am unable to determine whether or not the information given to Mr. Higgins was sufficient to require him to make a report pursuant to section 41 of the Act.

I realize that my interpretation of the statute, if it is correct, would remove the privilege that attaches to communications between a solicitor and his client with reference to or in anticipation of litigation or prosecution.

I sympathize with Mr. Higgins. He testified that, while he was not aware of the provisions of section 41 of the Act at the time, he felt the statute did not impose any duty upon him, a solicitor, to report information given to him by his clients in preparation of their defence of the proceedings in the Court. His opinion was that, if the issue were raised in a trial or upon an application to a court of competent jurisdiction to interpret the statute, the decision would be that the statute did not impose any duty upon a solicitor to report such information. His view was that preservation of solicitor-client privilege was essential to our system of jurisprudence. I share that latter view, but I disagree with Mr. Higgins' opinion as to the interpretation of section 41 of the Act as it was in 1975 and 1976.

As he contemplated the matter while testifying upon the Inquiry he suggested that he had in fact fulfilled the obligation by his statement on behalf of Annals Popen in the Court. He said he had no information other than what he revealed. I reject the suggestion that a statement in court six months after receiving information is compliance with the statutory requirement.

Mr. Higgins expressed the opinion that even if section 41 of the Act applied to information of the sort he had received he would not have reported the information to a children's aid society or Crown attorney. He felt he would have been entitled to ignore the section. I think he is in error.

I share Mr. Higgins' view that section 41 of the Act as it then was could cause a real problem for any lawyer involved in proceeding in any court relating to issues of wardship and child abuse.

In full sympathy and with understanding of his problem and position, I nevertheless feel he was in breach of section 41 of the Act in the fall of 1975 when he failed to report information to a children's aid society or Crown attorney.

In my view assuming that, in August, 1976 or some time thereafter, he received further information as to physical ill-treatment of Kim, he was in breach of section 41 of the Act by failing to

report it to a children's aid society or Crown attorney.

Raymond Wyrzykowski, a barrister and solicitor who had been a member of the Board of Directors of the Society and who had served as President for two years, voluntarily appeared as a witness upon the Inquiry. He is a highly respected member of his community and his profession.

Mr. Wyrzykowski, was asked as to his opinion of section 41 of the Act as it was in 1975 and 1976 and its relationship to or effect upon solicitor-client privilege. He responded that, although his personal interests were very child-oriented, he would feel bound by the solicitor-client privilege. He said he "hated" to give that answer, but felt obliged to do so. I gathered he felt preservation of such privilege was important and that if it were removed or weakened in any area its general application might be affected.

I mention Mr. Wyrzykowski's testimony in this area only to show the problem that section 41 of the Act, as it was, created for barristers and solicitors and that Mr. Higgins was not alone in his view as to the application of that section.

There was no testimony or submission to indicate that there was any judicial resolution of the matter or that the Law Society of Upper Canada had expressed any opinion or made any ruling upon the matter.

I note that the legislation enacted in 1978 appears to resolve the problem. Section 49 of The Child Welfare Act, 1978, which corresponds to and elaborates upon section 41 of the Act in force in 1975 and 1976, provides, in sub-section 4 thereof, that nothing in the section shall abrogate any privilege that may exist between a solicitor and the solicitor's client.

Another matter raised with Mr. Higgins related to a ruling of the Professional Conduct Committee of The Law Society of Upper Canada in September, 1977. That ruling was made in response to an inquiry by a solicitor associated with the Child Welfare Review Committee which deals with appeals

respecting the estimates of various children's aid societies. The Professional Conduct Committee expressed the view that it would be wrong for a lawyer who was a member of the board of such a society to appear on any matter if there was any possibility of a conflict of interest or even an appearance of such a conflict between what the lawyer sought to achieve for the client and the interests of the society.

I am satisfied that Mr. Higgins was apprised by Mr. Lovatt of the general tenor of the letter written by the Deputy Secretary of The Law Society of Upper Canada. When he was so apprised, Mr. Higgins expressed the opinion that, in the circumstances as they then were, Kim being then dead and no longer a ward of the Society and the Society not being a party to the prosecution, the view expressed by the Professional Conduct Committee was not relevant to his position. In his testimony upon the Inquiry he said there was then no adversary situation involving Jennifer Popen and the Society. He said the adversary situation involved Jennifer Popen and the Crown or prosecution.

Mr. Higgins expressed that opinion as his continuing and considered opinion at the time he testified upon the Inquiry.

In a technical sense he may very well be correct. He was seeking an acquittal of Jennifer Popen. Her acquittal or conviction, *simpliciter*, was of no concern to the Society. Nonetheless there could have been the appearance of a conflict of interest. The role of the Society and its personnel in Kim's life was almost certainly going to be mentioned in some way during Jennifer Popen's trial. In the end comments made during or in close relationship to that trial as to the decisions and actions of the Society and its personnel were probably among the factors which led to my appointment to conduct this Inquiry.

It is not for me to determine whether Mr. Higgins' retainer by Jennifer Popen in August, 1976 and his conduct of her defence upon the charge of manslaughter offended against the letter or spirit of the view of the Committee of The Law Society of Upper Canada.

In my view, even if he did not offend against the letter or spirit of that ruling, and I think he did, Mr. Higgins displayed questionable judgement in continuing to act on behalf of Jennifer Popen while he remained a member of the Board of Directors of the Society.

Mr. Higgins testified that in January, 1978, he wrote a letter to the Society. He said that letter could have been interpreted as being a letter of resignation from the Board of Directors of the Society. He said it was treated as such and his resignation as a member of the Board of Directors was accepted. By that time, of course, Jennifer Popen's trial was completed and the comments critical of the Society and its personnel which I mentioned earlier had been made and published.

Chapter XVII

The Role of the Board of Directors of the Society

For brevity I shall hereafter in this chapter call the Ministry of Community and Social Services the "Ministry."

There was no evidence upon the Inquiry that the Board of Directors of the Society, which for the purposes of this Chapter shall be described simply as "the Board," knowingly or consciously played any part in the life or death of Kim.

There was no evidence to indicate that at any time during her lifetime the Board or any member thereof, other than Mr. Higgins, was in any way aware of her case. The Board was not aware that the Society was in any way involved in her life. The Board was not aware that she was in the care and custody of the Society, *de facto* or *de jure*, from August 31, 1975 until her death.

A day or two after Kim's death Mrs. Harvey did orally inform Mr. David A. Allen, the then President of the Society, of her death and that she was a ward of the Society at that time. Significantly, in communicating that information to Mr. Allen, Mrs. Harvey did not advise him that the circumstances surrounding Kim's death were such as to have caused the Sarnia Police Force to begin an investigation into her death.

Mr. Allen testified that Kim's death was mentioned in the newspapers. It was reported as having been an accidental death.

He was left with the impression that a ward of the Society had died as the result of an accident. He understood that Mrs. Harvey was merely apprising him of the situation in case any one should direct any inquiry to him about Kim's death.

There was nothing told to him to indicate that Kim may have died as a result of criminal acts.

There was nothing told to him to indicate the nature and extent of the involvement of the Society in her life, including her removal from and subsequent return to her parents' home and the proceedings in the Provincial Court (Family Division) of the County of Lambton leading to Annals Popen's conviction on the charge under section 40 of The Child Welfare Act and the order placing Kim in the custody of the Society.

For brevity in this chapter I shall call The Child Welfare Act the "Act."

There was nothing told to him to indicate that the circumstances of Kim's death and of her family were such as to lead the Society to consider removing the infant, Karie, from the home or to remove him. In any event that conversation between Mrs. Harvey and Mr. Allen occurred after the infant was removed from the home on August 13, 1976.

There was nothing told to him to indicate that any action or decision by any of the Society's personnel involved in Kim's case might have been such as to lead to public criticism of the role of the Society in her life.

Mr. Allen did not ask Mrs. Harvey for any details of the circumstances surrounding Kim's death. On the basis of my assessment of Mr. Allen as a competent, caring and concerned member of the Board and community, I am confident that had Mrs. Harvey's communication to him been frank and complete he would have asked for such details and would have initiated appropriate procedure within and by the Board.

Thus I am confident that Mrs. Harvey's conversation was bland and innocuous in the sense that it allayed rather than aroused any concern that might have arisen had Mr. Allen then learned what he and the public began to learn in December, 1977. I think Mr. Allen acted reasonably when he assumed that he was being fully informed of all pertinent details and that the Society bore no responsibility for the unfortunate event.

Even more significantly neither Mrs. Harvey nor anyone else, especially Mr. Lovatt and Mr. Higgins, informed Mr. Allen or the Board or any other

member thereof that a charge of manslaughter had been laid against both of Kim's parents.

Mr. Allen could not recall that Mr. Lovatt, at any time prior to December, 1977, even spoke to him about Kim, the management of her case by the Society or her death.

It was not until the trial of Annals Popen and Jennifer Popen for manslaughter in December, 1977 that the Board began to learn the real extent of the involvement of the Society in the life and death of Kim. The Board's initial information came from the news media and the reports therein of the trial proceedings and events associated therewith. Even as those reports began, Mr. Allen did not associate the trial of Annals Popen and Jennifer Popen with Mrs. Harvey's brief telephone conversation with him sixteen months earlier in August, 1976.

Apart from Mrs. Harvey's telephone message to Mr. Allen there was, until December, 1977, no communication from any employee of the Society to the Board or any member thereof with reference to Kim and the Society's involvement in her life. Kim's case was not mentioned in any way even in Mr. Lovatt's regular written or oral reports to the Board. Kim's case was not discussed at any meeting of the Board or any committee thereof.

Mr. Allen did not advise other members of the Board of Mrs. Harvey's telephone call to him.

On her own testimony, Mrs. Harvey suspected on August 11, 1976 that Kim had died as a result of abuse inflicted upon her. Her suspicions were confirmed on August 12, 1976 during conversations with police officers.

Mrs. Lo had seen Kim's body on August 11, 1976 and had seen the full extent of the external marks of her injuries. Mrs. Lo was with Mrs. Harvey during some or all of her conversation with police officers on August 12, 1976. In her recording in the file of the Society for the period from September 1976 to January 1977, Mrs. Lo wrote:

"In mid-September both Mr. and Mrs. Popen had been arrested and charged with

manslaughter. Mr. Popen was granted bail on September 20, 1976 on condition he raise a \$3,000 surety. Mrs. Popen was remanded to St. Thomas Psychiatric Hospital for assessment for a period not to exceed 60 days. Court hearing was adjourned from September 27, 1976 to November 29, 1976 to January 13, 1977 to February 17, 1977."

On August 12, 1976, Mrs. Harvey spoke with Mr. Lovatt with reference to Kim's death. Although he was on vacation on August 12, 1976, he met with police officers and knew that a police investigation was underway. On his return from vacation he knew that Annals Popen and Jennifer Popen had been charged with manslaughter. He felt that the matter being *sub judice* it could not be discussed.

On the testimony of various members of the staff as to meetings of the teams of workers and the nature of the discussions thereat I infer that Kim's death and the fact that her parents were charged with manslaughter were discussed at one or more of those meetings. I infer too that the matter of the arrest and subsequent appearance of Annals Popen and Jennifer Popen in court were duly reported in and by local media in Sarnia. Thus other members of the staff of the Society, both social workers and clerical employees, would have been aware of the circumstances.

It is amazing that, with so many of the staff of the Society at every level, including clerical workers, aware or possibly aware of the full significance to the Society of Kim's death and the charge against her parents, the Board remained unaware of all of the circumstances of the case.

The responsibility lies on Mr. Lovatt as Local Director. He chose to remain silent because of his perception of the implications of the expression *sub judice*.

The responsibility lies on Mrs. Harvey. She spoke with Mr. Allen. She did not give him a complete and accurate report. She did not expand upon it later when Annals Popen and Jennifer Popen were charged with manslaughter.

The responsibility lies on Mrs. Lo. She knew of the relationship between Kim's death while in the care of the Society and the charge against her parents. A similar responsibility lies on every other employee of the Society who was privy to that information.

The responsibility of Mrs. Lo and staff personnel, other than Mr. Lovatt and Mrs. Harvey, is lessened by recognition of usual methods of communication between staff and the Board. I am left in wonderment that no staff member mentioned the case, however casually, to some member of the Board. Mrs. Mildred Patricia Wood, a member of the Board, did have among her friends at least one staff member with whom she discussed generally matters of mutual interest. I am sure that Mrs. Wood was not unique in that. Other members of the Board must have had friends or acquaintances on the staff of the Society.

In fairness to Mrs. Lo and other junior staff, they were entitled to assume that the supervisory or management personnel would have fulfilled their duties to the Board. Those duties include keeping the Board informed of matters which may affect the operation of the Society or its position in the community. Kim's death in all the circumstances was such a matter.

It is a sorry comment upon the Society that, despite the failure of supervisory staff to inform the Board, the ability of junior staff to communicate with the Board was such that none of them felt free or obliged to inform the Board. If any did feel free or obliged, there is no testimony that any acted upon such feeling.

It will be helpful to review briefly the organization of the Society.

The Society is a corporation without share capital incorporated under the laws of the Province of Ontario on November 21, 1933. Membership in the corporation and the composition of its Board of Directors are governed by its by-laws.

At all times relevant to the Inquiry, the Act imposed upon the Society an obligation to appoint

a local director responsible to the Board for the administration and enforcement of that statute and regulations thereunder. The Act imposed on the local director so appointed responsibility to co-operate to that end with the Director appointed for the purposes of the Act. I believe the Director was sometimes called the "Director of Child Welfare"; so hereafter in this Chapter I shall use the term Director of Child Welfare when speaking of the Director. The local director was also required to perform such other duties as maybe set forth in the by-laws and directions of the Society.

The Act imposed on the Director of Child Welfare the obligation of advising and supervising children's aid societies and of inspecting or directing and supervising the inspection of the operation and records of such societies.

During all of Kim's life, William John Lovatt was the Local Director of the Society. He resigned from that position early in May, 1978.

The Act set forth the purposes for which every children's aid society was to be operated. Those purposes appear to have been an enlargement and elaboration of the purposes set forth in the document incorporating the Society. In brief summary those purposes are to provide assistance, supervision, care and protection to children.

The Act required every children's aid society to provide at least the standard of service prescribed by regulations made under the Act. Regulation 86 made under that Act contained, after the heading "Standards of Service," sections 11 to 22 which set forth the qualifications one must possess to be eligible to be employed in various capacities in a children's aid society and which set forth various requirements as to the keeping of records and the management of cases. Only sections 11 to 18 of that Regulation 86 were relevant to the concerns of this Inquiry.

The testimony presented upon the Inquiry was to the effect that the by-laws of the Society authorized a Board of Directors composed of twenty-one persons including two nominees of the Municipal Council of the County of Lambton and two nominees of

the Municipal Council of the City of Sarnia. The nominees of each municipal council were members of that municipal council. That complied with the requirements of the Act.

Documents prepared by the Society and filed as an exhibit upon the Inquiry reveal that in some years the Board was composed of fewer than twenty-one persons even assuming, I believe correctly, that the President, Secretary and Treasurer of the Society were appointed from among the members of the Board and retained membership thereon while they served in those offices. In the years covered by those six documents, anywhere from nine to fifteen members of the Board in any year were re-elected to serve another term. In most instances the President, after a term of one or two years in that office, did not continue to serve as a member of the Board.

The oral testimony upon the Inquiry was to the effect that each year interested citizens were approached and were asked to permit their names to be put in nomination to serve as members of the Board for at least two years and a maximum of six years, which later was increased to ten years in the case of members of the Executive Committee.

There was no evidence as to the criteria applied by those responsible for the initial approach to such interested citizens and for the ultimate decision to place a person's name in nomination. The evidence upon the Inquiry satisfied me that if there were any such criteria they did not include any requirement of familiarity with the provisions of the Act and the regulations thereunder nor did they include any requirement of familiarity with the objects, procedures and operations of the Society.

The documents indicate many persons served as members of the Board for only one year. These included the incumbent Warden of the County of Lambton. Of the many whose names appeared in the documents filed, only one served as a director in each of the six years covered by the documents produced, two served for five and several for three or four years.

From the oral testimony and the records it would appear that in most years about one third or more of the members of the Board were replaced

annually. Some described the rate of turnover as "enormous." Others regarded the Board as a self-perpetuating body. Each of those views is extreme.

There was no evidence as to the qualifications for general or other membership in the Society or as to the procedure to be followed to gain such membership.

The experience of David Albert Allen as a member of the Board is perhaps typical, although he is the only one who served as a director in all six of the years covered by the documents filed upon the Inquiry and, unlike some retiring Presidents, he continued to serve on the Board after his term as President.

I am satisfied that Mr. Allen was sincere and dedicated in his service to the Society. He was deeply interested in its position and role in the community. He was very much involved in the activities of the Board. He was a good representative of the community.

The evidence indicates that he became a member of the Board on March 28, 1972 and served as President from March, 1976 to March, 1978 and thereafter continued to be a member of the Board.

He said that he had been approached initially by a colleague who was then President of the Society and by the Chairman of the Nominating Committee. He said that those persons outlined the process of election to the Board and inquired as to his interest in the Society.

Mr. Allen said that it appeared that the members of the Board brought a variety of life experiences and skills to the Board. Some of the members had been served by the Society in the past; some may have been foster parents; some may have been adoptive parents; some may have been interested because of personal interest in the affairs of the Society.

While not registered as a psychologist, Mr. Allen had been granted a Master's Degree in Psychology. He was Administrator of the Lambton County Board of Education.

Mr. Allen testified that service on the Board was a learning experience, but he did not receive any prescribed or other course of instruction as to performance of his duties and obligations. When he joined the Board, Mr. Allen had no knowledge of the powers, duties and obligations of the Society, the Board or the members of the Society and the Board. He was not then familiar with the provisions of the Act. He said he relied upon the experience of others.

Mr. Allen expressed his views as to the desirable composition of the board of directors of a children's aid society. He felt it should be a cross-section of the community. He felt that the presence of persons with professional training and skills could be helpful, but that membership on the board of directors should be open to all members of the community. He did express his view that it would be desirable to ensure that at no time were there too many new and inexperienced members of the board of directors. He felt that new members of the board of directors would require a period of time to learn the rights and powers and duties and obligations of the board of directors and its members. He felt an ideal board of directors would have a balance between persons with professional training and skills and those without. He felt the presence of too many of the former might create difficulty in securing participation by members of the community generally. He felt that the presence on the board of directors of persons with professional skills would be helpful to the board of directors. I presume his reference to professional training and skills related to training and skills relevant to the purposes and objects of a children's aid society.

The experience of Mrs. Wood is also perhaps typical. According to the documents filed, she became a member of the Board on March 12, 1973 and on the same day became the Secretary of the Society. She served as Secretary for three years and remained a member of the Board thereafter.

Mrs. Wood had been an employee of the Society from 1961 to 1965 and thereafter had, sporadically, performed volunteer services for the Society.

She held a degree of Bachelor of Arts. While she had no formal education in matters within the scope of operations of children's aid societies she did have an interest therein. During the years subsequent to 1961 she attended various conferences and seminars dealing with such subjects. From 1975 to 1978 she was employed as a case worker with the Big Sister Association in Sarnia.

I am satisfied that Mrs. Wood, like Mr. Allen, was sincere and dedicated in her services to the Society. Like him she was deeply interested in it and became much involved in the activities of the Board. She too was a good representative of the community.

Unlike Mr. Allen, Mrs. Wood, by reason of her employment with and earlier interest in the affairs of the Society and the Big Sister Association, had, before her election to the Board, some basic knowledge of the organization and operation of the Society. There was no evidence to indicate that subsequent to her appointment as Secretary of the Society or her election to the Board she received any instruction as to the performance of her various duties.

Mrs. Wood's view as to the desirable composition of the board of directors of a children's aid society was quite different from Mr. Allen's. She felt that a board of directors composed of volunteers left much to be desired. It was not clear to me whether or not she advocated that members of the board of directors should be remunerated for their service as directors, but the tenor of her remarks seemed to suggest that she was so inclined.

Mrs. Wood's observation was that, as the situation was in the Society, the Board was separated from the main stream of the operations of the Society.

She said there was an ineffective system of reporting and accountability by the staff of the Society to the Board.

Mrs. Wood's opinion was that the existing organization of children's aid societies created various levels and thus divisions among people who

should be working toward the same goal, but who sometimes seemed not to be working that way.

Mrs. Wood was particularly critical of the existing method of appointing representatives of municipal councils to the board of directors of children's aid societies. She felt that in many instances such representatives served for only one year and thus did not have sufficient opportunity to develop interest in and knowledge of the operation of the children's aid society. Her observation was that such representatives were interested in controlling expenditures with too little regard for the service provided by the children's aid society to children and families in the community.

Mrs. Wood's observation of some members of the Board was that they were not sufficiently interested in the affairs of the Society to ask questions or to ask for materials to assist them or even to pick up from the boardroom table copies of pamphlets placed there for them. Her assessment of members of the Board was that some did not possess sufficient knowledge of the operations of the Society to enable them to perform their duties properly and fully. She felt those duties included assessment of and accountability for the performance of the Society.

Mrs. Wood's view was that some of the problems of the existing composition of the board of directors of a children's aid society could be resolved if, in seeking nominees for election as directors, the nominating committee sought out persons interested in the welfare of children, preferably person with backgrounds in social services. She felt that retired or unemployed social workers, foster parents and employees of the children's aid society would be good members of the board of directors. She felt their knowledge would provide greater and better information to the board of directors and lead to better decisions by it.

Mrs. Wood said that in the City of Sarnia and the County of Lambton there had been difficulty in persuading people to serve on the Board.

The documents filed upon the Inquiry in part support Mrs. Wood's comments as to the tenure of

representatives of the municipal councils upon the Board. It seems that most often one of the nominees of the County Council was the incumbent Warden and that member changed annually. But one apparent nominee of a municipal council, Alderman M. Brown, was a member of the Board for at least three years. John Harris McPhedran, who became President of the Society in 1978, was a nominee of the Municipal Council of the City of Sarnia elected as a director of the Society on January 1, 1975. He remained a member of the Board for at least four years. The documents and oral testimony do not enable me to identify any other representative of the municipal councils.

Mrs. Wood expressed concern that the task of the local director of a children's aid society was complex and difficult. She felt that a local director was under too many pressures and obligations some of which were competing or conflicting. She suggested that those pressures and obligations came from or were owed to the Ministry, the municipal councils as represented by their nominees on the board of directors of the children's aid society, the board of directors and even the employees of the children's aid society particularly as represented by any staff association.

Mrs. Wood was so concerned about what she and, she felt, the Board perceived to be problems within the Society from time to time that in 1975 or 1976 she spoke to Mr. Lovatt and to the Board about the possibility of inviting the Child Welfare League of America to send representatives to visit the Society and to assess its organization and performance. She said Mr. Lovatt's opinion was that the Society could not afford the expense, but the Board seemed to be favorably inclined until the financial restraints of the Provincial Government and the Ministry were announced and applied. The suggestion then lapsed.

There was no evidence as to what costs might have been involved had the Board decided to adopt Mrs. Wood's suggestion.

Mrs. Wood in her testimony spoke of her belief that Mr. Lovatt was overburdened by reason of responsibilities assigned to or assumed by him. She

said that from time to time she had sought to relieve him of some rather simple tasks, such as arranging for meetings of committees of the Board. She said he and other management personnel did not appreciate her gesture. She was discouraged from offering assistance.

Mr. McPhedran, who succeeded Mr. Allen as President of the Society in 1978 was President when he testified upon the Inquiry.

He brought a third type of background and experience to the Board. He was an employee of the Government of Canada engaged in analysis of employment markets and local economic trends. He had been a member of the Board of Directors of the Children's Aid Society of Oxford County from 1972 to 1974. He had an ongoing interest in children's aid matters over the years.

Like Mrs. Wood and Mr. Allen, Mr. McPhedran was sincere and dedicated in his service on the Board and was deeply interested and involved in the affairs of the Society. He too was a good representative of the community.

Mr. McPhedran expressed his view that it was difficult for a children's aid society of a size such as that in the City of Sarnia and the County of Lambton to obtain volunteer members of the board of directors who were knowledgeable of, and thus able to make reasonable decisions on, policy issues in the area of children's aid matters. He felt that without such prior background knowledge the task of the individual member of the board of directors was made much more onerous. He felt that without that prior knowledge a member of the board would be required to work very hard to enable himself or herself to fulfill the demands of membership upon the board of directors.

Mr. McPhedran's assessment of the Board, as I interpreted his testimony, was that few were knowledgeable of the affairs of the Society and had considerable length of experience of service as members of the Board. The result, as he saw it, was that a relatively small number of knowledgeable and experienced directors influenced and effectively made the ultimate decisions of the Board. He felt that

this came about because of the default of other less knowledgeable or experienced members of the Board. Mr. McPhedran felt his view corresponded to that expressed in the Hanson Report in 1973 and 1974.

Mr. McPhedran's view as to the desirable composition of the board of directors of a children's aid society was in some ways similar to and in some ways different from the view of each of Mrs. Wood and Mr. Allen.

Mr. McPhedran shared Mrs. Wood's view that some members of the board of directors of a children's aid society should have "professional social work" experience. He did not define what he meant by "professional social work" experience. He felt that, in addition to such members, the board of directors should be composed of local citizens and elected local officials. He recognized that any provision for the presence of elected local officials could and did lead to frequent changes of personnel and thus, to a degree, a lack of continuity of representation and of attendance at meetings because of conflicting commitments. He felt that, because of the small impact of the children's aid societies' operations upon the municipal budgets, service on the board of directors of the children's aid societies was not of great importance in the scheme of things for those involved in municipal government.

Mr. McPhedran believed that the presence of members with professional expertise would enable the board of directors to assess more accurately the performance of the children's aid society and its personnel in the various fields of service to the community. He felt their presence would be helpful to the board of directors in establishing and maintaining relationships with the public and with other community resources and with government.

Mr. McPhedran felt that there was an element of self-perpetuation by the members of the Board who became very involved in the affairs of the Society. As I have done in a different way, he reviewed the persons who had been members of the Board in 1975, 1976 and 1977. He said that of the twenty-one who formed the Board in 1975 only nine were members of the Board in 1978. He said only five of those nine had been on the Board for more than

five years. He said no elected official who was on the Board in 1976 was still on the Board in 1978.

Mr. McPhedran attributed part of the rate of turnover to the fact that the population in the area served by the Society was itself quite mobile with large numbers of employees of corporations moving to or from the area.

Mr. McPhedran expressed the view that, in many areas of the operation of the Society, the Board did not fulfill its responsibility. He felt that that default then left it to the Local Director, Mr. Lovatt, to assume greater responsibility in the areas of policy and management than he should have been expected to assume. He felt that the responsibility given to the Board under the Act required the members of the Board to be more involved in a knowledgeable appraisal of the operations of the Society.

Mr. McPhedran felt that, in part at least, default such as I have mentioned in the preceding paragraphs, occurred because well-intentioned persons accepted election to the Board without adequate awareness or knowledge of what was involved and what was expected of them. He felt the default came about because such directors did not, after election to the Board, receive adequate training or instruction as to their duties.

Mr. Wryzykowski, in brief testimony, introduced a somewhat different perspective. He had been a member of the Board for about eight years. In 1971 and 1976 during the last two years of his tenure he was President.

Like the more recent members of the Board who testified he was a responsible and interested member of the community. He was a respected member of the bar. He had a great interest in organizations assisting families; his greatest interest was in the well-being of children.

Like the others he received no training or instruction as to the duties and responsibilities of a member of the board of directors of a children's aid society. He received no instruction as to the provisions of the Act. The manual published by the Ontario Association of Children's Aid Societies was

not prepared until after he ceased to be a member of the Board.

He had not realized the full extent of the obligation and responsibility assumed by the Board and its members. Like Mr. Higgins, he doubted that he or any other person would have become a member of the Board had he or she had that realization. He did not elaborate upon his perception of the extent of the duties of the Board.

Mr. Wryzykowski testified to his high regard for the dedication and service of the members of the Board. He stressed that they were not trained as social workers. He felt they should not bear any responsibility for the management of individual cases by the staff of the Society. His view was that the Board's role was to establish general policy and to assist the staff of the Society to provide the services required of the Society.

Mr. Wryzykowski's recollection was that no individual case was, by name, brought to the attention of the Board.

Mr. Wryzykowski testified that during his eight years of service he thought the Board had had a good relationship with Mr. Lovatt and Mrs. Harvey. He said the Board thought highly of them, but, like the others who testified, he acknowledged a personal lack of ability to assess their qualifications for their positions.

Mr. Wryzykowski testified that he had become somewhat disenchanted when the financing of children's aid societies was changed and the Provincial Government became more involved therein. He said that from then on he lost interest in the financial aspects of the Board's function. In that latter he seems to have been unique among the members of the Board and even of the staff.

Mr. Wryzykowski, drawing particularly upon his experiences as Area Director of Legal Aid, mentioned the differences that existed in and among the areas and municipalities of Ontario. He thought that municipalities required children's aid societies providing services designed to meet the local needs

and demands. He felt local boards of directors were important in recognizing those needs and demands.

Mr. Higgins' experience as a member of the Board was somewhat different. In his professional practice as a barrister and solicitor he had had limited experience with matters which involved the application of the Act. They related primarily to the obligations of municipal corporations to reimburse children's aid societies for certain expenses.

Early in 1976, Mr. Higgins was approached by Mrs. Harvey and consented to his name being put in nomination for election to the Board.

I am satisfied that Mr. Higgins gave that consent in the same spirit that the other directors who testified had given their consents. He too was an interested and concerned public spirited citizen. He had the skills and knowledge of the practice of law which could generally be helpful to the Board in its general government of the affairs of the Society. He was prepared to apply that skill and knowledge as a member of the Board.

I am satisfied he had no ulterior or improper motive in giving that consent. Specifically, I am satisfied that his retainer by Jennifer Popen and Annals Popen was not a consideration in his mind when he gave that consent.

Mr. Higgins did not become as deeply involved in the affairs of the Society as did Mrs. Wood and Messrs. Allen and McPhedran. His attendance at meetings of the Board was irregular. He attended only six of seventeen meetings of the Board held while he was a member of the Board. He could remember attending only one committee meeting. He said that he, like others, did not do much work by way of preparation for meetings of the Board.

Mr. Higgins did not receive a copy of the manual prepared in 1975 by the Ontario Association of Children's Aid Societies entitled "A Working Manual For Board Members of Children's Aid Societies." He did not receive a copy of the Act. He did attend one meeting intended to provide orientation for newly elected members of the Board, but he did not find it particularly helpful. He felt it was quite general

in nature. It did not make any reference to child abuse.

Mr. Higgins' observation of other members of the Board was that all of them were interested in children, but some worked harder than others as members of the Board. As I would have expected from the evidence of others as to the pervading concern with financial matters within the Society, Mr. Higgins testified that he felt the Finance Committee of the Board was composed of hard working members.

Mr. Higgins relied on the Local Director and other employed personnel of the Society to ensure that the Society properly performed its obligations and duties. He did note that Mr. Lovatt seemed to be operating under considerable difficulty relating to the provision of funds for the programme of the Society.

Mr. Higgins seemed to share the concern of others in the Society as to financial matters. He perceived his role as a member of the Board as being a watchdog for the community to ensure that money was wisely spent.

Despite his training and experience in the practice of law, Mr. Higgins acknowledged that, until the Inquiry, he was not fully aware of the various provisions of the Act particularly those which imposed duties and obligations upon members of the boards of the directors of children's aid societies. He said that had he been aware of those provisions he would have declined the opportunity to serve on the Board.

As I have noted, members of the Board, including Mr. Higgins, relied upon the staff of the Society. In that context it is interesting to note a portion of Mrs. Harvey's testimony.

Mrs. Harvey was asked if she had proposed to Mr. Lovatt that Mr. Higgins become a member of the Board. She replied that she had and continued her response as follows:

"A. We didn't have a lawyer on the Board and the Annual Meeting was coming along in March.

Q. '76.

A. I guess it, yeh, March '76. Mr. Higgins had talked with me from time to time in the Court while the hearings were going on and being adjourned or what not, and while he was fighting me he was doing a good job on behalf of his clients, as his clients, and I thought if I can get a scrapper like this to work as hard for us as against us we will have gained a great deal of support from a good legal person on the Board, and Board Members always need to be trained anyway so I thought we could train him and educate him and have him more helpful to C.A.S. in the future. But he was a good legal person and we needed one on the Board."

Thus, Mrs. Harvey felt that members of the Board required training or education in the performance of their duties and that the staff had an obligation in that regard.

If one with the skills and experience which Mr. Higgins had required training and education, it would seem reasonable to surmise that others, without such skills and experience or other skills and experience directly related to child welfare matters, would require training and education as members of the Board.

I am satisfied that there was little organized effort by the Board to obtain or by the Ministry, Mr. Lovatt and the supervisory staff of the Society and other staff to provide such training and education.

Mr. Allen testified that he relied upon the experience of others. He felt that until the circumstances of Kim's death became known to the Board, beginning in December, 1977, the Board was generally concerned with the financial affairs of the Society and general management issues.

He said that some members of the Board had become knowledgeable in certain areas of the Society's operations including financial and personnel staffing matters or other matters brought to the

attention of the Board, perhaps by complaint voiced in the community as to the level or standard of service.

Mr. Allen felt the Board would have become involved in a particular case only if there was any complaint of any lack or failure of service by the Society in that particular case.

It was clear to me that Mr. Allen was not aware of any such complaint in respect of Kim's case until December, 1977.

Mr. Allen testified that he had felt a degree of satisfaction with the financial management of the Society, and particularly that in 1977 the Society's financial statements indicated a surplus. But, he said, there was always present a climate of insufficiency of funds, staff and time to do what was required. He said he sensed

"that one had to do battle with government in order to obtain the necessary funds."

He said the 1977 surplus came about because in that year the Society had not taken into its care as many children as had been anticipated. He felt that the presence of a surplus was unfortunate because it existed at a time when the demands upon the Society for provision of service were increasing.

Mr. Allen regretted the existence of that feeling of tension with government because, in his opinion, restraint upon the Society for financial reasons would place the Society in a more dangerous position. I think he meant by that that the clients or potential clients of the Society would be more exposed to danger if the Society lacked the funds and personnel required to meet the demands upon it for services.

The members of the Board who testified expressed some concern as to the ability of the board of directors of a children's aid society, composed essentially of laypersons, to perform and fulfill adequately the duties and obligations which should be borne by the board of directors. From that concern they developed some views as to the role of the Ministry and the relationship between the Ministry

and the boards of directors of children's aid societies.

Mr. Allen expressed the view that the Ministry should assume a greater role in auditing, reviewing, monitoring and assessing the procedures, policies and case management practices of children's aid societies. He felt that should include a review of records and files and of the processes involved in decisions made in individual cases.

Mr. Allen felt that the Ministry should report annually to each children's aid society. In his opinion such a report would lead to consultation and discussion between the Ministry and the local society with reference to any areas of concern or of differences of opinion. He thought that the existence of such review, assessment and reporting procedures by the Ministry would obligate, encourage and assist the local society to pay closer and more effective attention to its function. Thus the services provided by the local society would more adequately meet the needs and demands of the community.

Mr. Allen testified that in the years of Kim's life and his membership upon the Board, the staff of that Ministry did visit the Society. He testified that he felt confidence in the ability of the Ministry's personnel who did visit the Society. He believed there was a good relationship between them and the staff of the Society. Despite all of that he regretted that the Board did not receive much, if anything, in written form from the Ministry or its staff. He felt that the Board should have received from them some assessment of the overall management and performance of the Society.

There was no indication in the testimony of any of the members of the Board that the Board or any of them as individuals had ever expressed in any way to the Ministry or any of its staff the desire or need of the Society for any such review, assessment or report.

It may very well be that that absence of expression of desire or need flowed from the inability of the Board as a board and its members as individuals to assess the performance of duties and obligation by the Society as an entity and by the

employees, particularly the Local Director of the Society, as individuals.

When asked about the ability of the Board to make any such assessment, Mr. Allen referred only to an examination of the financial position of the Society and what might flow from that. He said he felt confident that the financial operations of the Society were well-managed.

As he developed that particular response he recognized that financial or budgetary results might not provide any adequate assessment of the overall performance of a social agency such as the Society.

On all of the evidence I am satisfied that newly elected members of the Board received little, if any, instruction as to the nature of their duties, obligations and powers.

A document entitled "A Working Manual For Board Members of Children's Aid Societies" has been available to members of the Board, but there was no firm testimony as to how many members of the Board obtained a copy or were aware of its being available. It was first printed in 1975 and has been revised. It was prepared and published by the Ontario Association of Children's Aid Societies.

Mr. Allen testified that that document outlined the role and responsibility of children's aid societies. He felt that some members of boards of directors of children's aid societies might have some difficulty understanding it. He suggested that some, on reading it prior to coming upon a board of directors, might decide to decline election to the board of directors.

That latter comment is rather akin to the sentiment expressed by Mr. Higgins to the effect that had he, prior to his election to the Board, been aware of certain provisions in the Act he would not have consented to become a member of the Board. If Mr. Higgins, a competent, skillful and experienced barrister and solicitor, was unaware of all of the implications of membership upon the Board it seems reasonable to conclude that others, not so trained and experienced, would be less aware of those implications.

I am satisfied that membership upon any committee of the Board resulted from whatever special interest that a member of the Board might have in the matters specifically dealt with by the particular committee. The exact organization, structure, role and procedure of each of the committees was not clearly defined in the documentary or oral testimony.

I am satisfied that, in the main, the Board concerned itself with the affairs of the Society in only the broadest of terms. The members of the various committees would deal somewhat more specifically with the areas falling within the ambit of the committees. Three committees which I recall were mentioned in testimony were the Executive Committee, the Services Committee and the Finance Committee. From the tone of the testimony given by those members of the Board who testified upon the Inquiry, I gathered that the Finance Committee and its areas of concern along with matters of staffing attracted the greatest attention of the Board.

As to the other committees, I gathered, from the absence of detail as to their organization and function provided by the directors who testified, and from the specific uncontradicted evidence of Harry Zwerver, that those committees existed primarily on paper. They met seldom if at all.

The by-laws of the Society assigned specific responsibility only to the Executive Committee. The Act requires the directors of a children's aid society to pass a by-law providing for the election of an executive committee and for the delegation of powers to it in the discretion of the board of directors.

The by-laws of the Society did not delegate any powers to any other committee.

I am satisfied on the evidence that the Board did not concern itself in any way, either as the Board or through a committee of the Board, with the management of individual cases. Mr. Allen in his testimony "guessed" that the Board would become involved with the specific details of a case if some complaint as to the handling of the case by the Society was brought to the attention of the Board. From Mr. Allen's use of the verb "guess" I can only

presume that during his tenure on the Board no such instance had arisen.

Apart from any special meetings, the Board met regularly on a monthly basis, except for July and August. Mr. Lovatt, as Local Director of the Society, regularly attended those meetings. Other members of the staff of the Society, especially the supervisors, attended some of those meetings, particularly if they had some special interest in any matter to be discussed. Those matters usually related to salaries, staffing and the workload or caseload of the Society in general and did not relate to specific identifiable cases within the Society.

Mr. Lovatt prepared monthly reports upon the operation of the Society. Those reports were submitted to and discussed at the meetings of the Board.

Throughout the testimony of those members of the Board who testified upon the Inquiry, and indeed throughout the evidence of other witnesses familiar with the organization and operation of children's aid societies and similar bodies, there were some common threads.

One such thread was that, in the main, the Board, like the boards of directors of other similar bodies, was dependent upon the Local Director as a source of information and expertise generally in relation to the operation of the Society. Unless the Local Director brought something to the attention of the Board it was unlikely that the Board would learn of it. One of the recognized duties of a local director of a children's aid society is to keep the board of directors informed as to conditions within or relating to the children's aid society and as to any need to formulate any policy or procedure.

Mr. Allen in his testimony acknowledged that it would be correct to say that the Board and its committees were "pretty well at the mercy of the Local Director and his staff" as to what information was received.

A corollary of that common thread was expressed by the members of the Board who testified. That was a confidence in and reliance upon the

capabilities and skills of the employees of the Society.

I am satisfied that, while the Board's ignorance of the Society's involvement in Kim's life is a flagrant example of what could flow from such a dependence and reliance upon the staff, it is only an example. I am not confident that there were not other situations and problems less glaring, less tragic than Kim's which existed and of which the Board and perhaps even the staff generally of the Society was unaware.

Harry Zwerver, who was appointed by the Ministry in March, 1978 to be a Special Field Consultant responsible for the operation of the Society, voiced a similar and perhaps an even greater concern as it related to the situation within the Society shortly after his appointment.

When asked his view as to what might occur in Sarnia or the County of Lambton in light of his review of the state of files within the Society he replied:

"I was concerned that there might, in fact, be children in the community that were or had been abused in the past or where abuse could occur in the future, and where the Society was not actively involved in dealing with that situation. There were times when it felt like everytime we scratched the surface of something we would find something else and I think both Mrs. [Pauline] Mabel and I felt most discomfited in reading some of those files and, you know, became very apprehensive about what, in fact, could possibly happen. The question was put to me by the Board of Directors in fact as to whether situations similar to the Kim Anne Popen case could occur, and at that point in time it being only about three weeks into my being there, I certainly could not guarantee them that it could not occur not having total knowledge of all of the cases obviously at that time."

A second such common thread was that the Board, composed primarily if not entirely of persons without training or life experience in social work, was unable independently to assess the performance of the Society as an entity or of the Local Director or any other employee as an individual. They were unable independently to assess the quality or adequacy of the services delivered by the Society to the children and families of the community. But the need for assessments of staff services was acknowledged.

Mr. Higgins perhaps put it as succinctly and as well as any. He said that at any meeting of the Board which he attended there was no discussion of the performance of professional duties by the employees of the Society. He felt that the employees of the Society who had training and skills in social work bore the responsibility for the proper performance of professional duties by the staff. He said he was not qualified to assume that responsibility. In his opinion other members of the Board were similarly not qualified, but were sincere and interested members of the Board and wanted to assist the Society to fulfill its mandate in the community.

Assessment of the qualifications and performance of lower echelon employees of the Society were prepared regularly and were maintained in the personnel records of the Society. They were prepared primarily by the supervisory employees. I presume they were available to the Board if required. There was no testimony to indicate that the Board even reviewed those assessments.

There was no evidence to indicate that assessments of the qualifications and performances of supervisory personnel of the Society were prepared regularly if at all. I am satisfied that no such assessment with reference to Mr. Lovatt was prepared by anyone and made available to the Board subsequent to the confirmation of his appointment as Local Director in or about 1968.

A third such common thread was that there was little contact between the Board and the Ministry except in areas related to preparation, submission and approval, in whole or in part, of annual budgets or estimates.

Mr. Allen's testimony was to the effect that any contact between the Board and the Ministry and its staff, other than in relation to budgetary matters, was quite informal. He said that personnel from the Ministry had visited the Society, but their contact was primarily with the staff, including the Local Director, and not with the Board. He said that personnel from the Ministry did, on occasion, attend with the Board and would provide oral responses to any questions raised by members of the Board.

Mr. Allen understood that the Board received no formal or written reports from the Ministry following the visits of Ministry personnel to the Society. He understood that, apart from those oral responses and the comments upon proposed budgets, the Board received no reports from the Ministry pertaining specifically to the operation of the Society.

It would seem that Mr. Allen is somewhat in error since the Society did receive what are essentially statistical reports following visits by Ministry personnel for one week in each of the years 1972 and 1973. However, while those reports were entitled "Report to the Board on Child Welfare Surveys" the procedure within the Society was that Mr. Lovatt prepared a summary of each such report and only that summary was read to the Board. In any event such reports were not assessments of the operations and staff of the Society in any sense.

Mr. Allen testified that in his years with the Society the Ministry had not, to his knowledge, made to the Board any statement indicating any shortcoming in the operation of the Society or in the performance of its personnel. He said the Board did not receive from the Ministry any statement as to or assessment of the quality, adequacy or nature of the services provided by the Society to the community. No evidence was led by anyone to contradict or diminish the force of that testimony.

Mr. Allen acknowledged that the Board had not requested the Ministry to provide to the Board any assessment of the operation of the Society and the services provided by it or any assessment of the performance of any employee.

The evidence presented upon the Inquiry did not indicate that the Ministry in any way, perhaps apart from its contribution towards the Ontario Association of Children's Aid Societies and that Association's publication of the manual for board members, attempted to inform or instruct members of the Board as to their duties and the performance thereof or as to the overall role and operation of the Society including assessment in any way of the manner in which the Society and its personnel fulfilled or failed to fulfill its mandate.

Conversely, apart from Mrs. Wood's testimony as to her abortive effort to obtain an independent appraisal of the operation of the Society, there was no evidence to suggest that any effort was made by the Board or any of its members to obtain any information or assistance from the Ministry or elsewhere.

I accept Mr. Higgins' testimony that he acted as a member of the Board in the same way as he acted while a member of the boards of directors of other public spirited organizations in the community. I think other members of the Board acted similarly. Assuming those who testified upon the Inquiry were generally representative of the members of the Board, the Board as an entity and its members as individuals were anxious to perform a public service and to perform it well.

I am unable to understand how, apart from their confidence in the integrity and competence of the staff of the Society and of the Ministry and their confidence that those people would inform them of any problem or shortcoming, the members of the Board were not aware of the existence of problems and weaknesses such as those which Mr. Zwerver, Mr. McCabe and the members of the committee under the chairmanship of Mrs. Farina so quickly discovered in 1978.

I appreciate that when Mrs. Farina and the various gentlemen I have mentioned visited or served in the City of Sarnia and the County of Lambton in 1978 the situation within the Society had developed far beyond what it was prior to the trial of Annals Popen and Jennifer Popen in December, 1977. Staff

morale must certainly have been affected by all that happened in the aftermath of that trial.

Having said that the fact remains that all was not well in the Society prior to that trial and during Kim's lifetime. The Board must bear some responsibility for that. In assuming membership upon the Board they assumed the responsibility for governing the Society.

The Society employed persons with professional or quasi-professional qualifications. It operated under the authority of the Act and, presumably, received from the Ministry, through the office of the Director of Child Welfare the advice, supervision and inspection mentioned in that Act. Therefore I accept that ordinarily citizens such as they, serving voluntarily as directors of an organization such as the Society, might reasonably depend upon the staff of the Society and of the Ministry to ensure the provision and maintenance of the basic components of a good and proper operation of the Society by duly qualified personnel.

Mr. Allen in his testimony spoke of the sense of battle with government to obtain necessary funds. He spoke of confidence in the management of the financial aspects of the Society's operations. At the same time that there was in the Society that climate of insufficient funds and staff there was, in 1977 at least, a budgetary surplus.

The contradiction of the apparent shortage of funds in the face of a surplus of some \$12,000.00 in 1977 was illustrated by one area of Mr. Zwerver's testimony. It was ludicrous. He testified that upon or very shortly after his arrival in Sarnia in March, 1978 he found that some office supplies were lacking. There was no writing equipment such as pens and pencils. There were no writing pads; so internal memoranda were written on the backs of blank cheque forms. There was no notebook paper for the staff to use for case notes. There were no binders to hold whatever case notes might have been written.

Employees of the Society had mentioned to Mr. Zwerver that there was a concern among the staff regarding such lack of supplies. Mr. Zwerver testified that, when he inquired of Mr. Lovatt as to

why that lack existed, Mr. Lovatt's response was that the Society could not afford to buy them. What a sorry statement. What a sorry state of affairs for the Society.

Mr. Zwerver's opinion was that, with an overall surplus of \$12,000.00 and a total budget of about \$600,000.00, an expenditure of, say, \$200.00 over the budget allocation for office supplies would not have created any problem between the Ministry and the Society. His belief, which was not contradicted by any other testimony, was that while the Ministry required examination of each budget item separately before approval and each amount was approved separately the local children's aid society then, after budget approval, was responsible for and was allowed discretion in the allocation of funds; so some of the surplus could have been used for office supplies.

The evidence showed that proposed budgets submitted by the Society to the Ministry were not always accepted and approved in total by the Ministry. Sometimes the Ministry required explanations of particular items. Mr. Allen was aware that Mr. Lovatt was greatly concerned with and involved in the financial and budgetary concerns of the Society.

I accept that there was no malfeasance or misfeasance in the financial affairs of the Society. No monies were stolen or embezzled. No monies were expended other than for the proper and lawful purposes of the Society. That type of situation is not an element in any of my considerations.

I accept that, if the goal of the administration of the Society was to provide service to the community at a low cost in relation to the population of the community, the Society performed very well in relation to other children's aid societies in Ontario. But per capita costs do not provide any assessment of the quality of service provided to the community.

I accept too that the salaries paid by the Society to its employees were competitive with salaries paid by other children's aid societies in Ontario. I accept that in some areas the so-called package of fringe benefits was more generous than in many other children's aid societies. But competitive

salary packages do not necessarily ensure corresponding personnel qualifications.

It would seem that the financial administration of the Society did not merit the confidence that Mr. Allen and, presumably, the Board had in it. The Board does not bear the entire responsibility for that situation. Mr. Lovatt in my opinion must bear the bulk of the criticism in this area. He did not keep the Board fully and properly informed. Other staff, particularly supervisory staff, must also share responsibility. They too did not inform the Board of any financial concerns.

But the Board did nothing to seek to resolve the areas of the financial concerns of which it was aware or of which it ought reasonably to have been aware. The Board did not initiate any discussion with the Ministry to seek some means of alleviating the feeling or sense of battle with the Ministry to obtain funds. The Board did not initiate any review of the financial affairs of the Society to seek to ascertain why, particularly in the face of the surplus available in 1977, supplies essential to the operation of the Society were not available to its staff.

It is incomprehensible that no member of the Board was aware that basic inexpensive items such as pens, pencils, note-paper and binders were not available to the staff. If indeed no member of the Board was aware of that situation then truly the Board was far removed from the operation of the Society as was suggested by Mrs. Wood in her testimony.

The situation of the Society must indeed have been in a sorry state if members of staff could and did attend meetings of the Board, but, apparently, not advise the Board that pens, pencils and paper were not available for them to make proper notes. That is a sad commentary upon the affairs of the Society. The Board along with the staff, including Mr. Lovatt and the supervisors from time to time, must bear responsibility for it.

I am prepared to accept that one of the duties of the local director is to keep the board of directors informed as to all elements of the

operation of a children's aid society. The Act in section 4 provides that the local director is responsible to the board of directors for the administration and enforcement of that Act and the regulations thereunder. The local director is required to co-operate with the Director of Child Welfare to that end. He is also required to carry out such other duties as may be required by the children's aid society.

I am prepared to accept that the normal communication by staff personnel to the board of directors of a children's aid society would be through the local director. Even so the board of directors might reasonably be expected to have made provision for an avenue of communication to it from supervisory staff in the event the local director failed to pass to the board of directors any information the supervisory staff felt should be given to the board of directors. Similarly it is reasonable to expect that there would be some avenue of communication from junior personnel to the board of directors in the event supervisory staff and the local director failed to pass to the board of directors any information flowing from junior personnel.

In the present instance there was no evidence to indicate that the Board had procedures to ensure that it received any information of whatever sort from supervisory staff if Mr. Lovatt chose to withhold it from Board or from junior staff persons if either Mr. Lovatt or supervisory personnel chose not to pass it to the Board.

The members of the Board who testified said that the Board depended upon Mr. Lovatt for information and advice upon the operation of the Society. That is as it should be. But, in my opinion, the Board should have adopted procedures which would have ensured that it received all information relevant to the performance of the Board's role.

Mrs. Kathy Mitchell, a former employee of the Society, testified upon the Inquiry. She had had some involvement in the field of social work, but had no particular training or expertise as a social worker. She was employed by the Society as co-ordinator of its volunteer services from October,

1974 until December, 1977. Mrs. Mitchell had no direct involvement with Kim's case, but it played a major part in her decision to resign her position with the Society.

Mrs. Mitchell testified that she had felt all was not well in the Society. She spoke of dissension between departments and grumbling among employees. That dissension and grumbling preceded Kim's case, but, she said, they were "magnified" by it.

Mrs. Mitchell testified that there was not good communication between the Board and the staff of the Society. She spoke of attending meetings of the Board at which the Board would take certain action and of being present later when that action was discussed by the staff. She said that sometimes, when interpreting the Board's action to the staff, the supervisory staff, particularly Mr. Lovatt, did not properly put and explain the Board's action in the way Mrs. Mitchell, having heard the matter at that Board meeting, felt it should have been put and explained. Sometimes when the Board responded favourably to a request from the staff, as to a request that minutes of Board meetings be posted in the staff area not accessible to the public, the Board's favourable response was not promptly revealed to the staff.

Mrs. Mitchell had a friend who was a member of the Board. They discussed matters of mutual interest or concern at the Society. Mrs. Mitchell felt that those discussions tended to confirm her belief that the communication between the Board and staff was not good. She said that it seemed that neither the Board nor the staff really sought any improvement.

To illustrate this problem in communications, Mrs. Mitchell spoke of Kim's case and the effect it had on her position.

As co-ordinator of the Society's volunteers, she approached members of the public. After Kim's case became a matter of public knowledge in later 1977 she found that she encountered some difficulties in those approaches. She felt she was unable to provide adequate answers to questions about

the case. That inability was rooted in her belief that she and others, members of the Board and of the staff, had not received full and fair answers to questions about Kim's case which she and they had put to Mr. Lovatt and Mrs. Harvey.

At a meeting of the staff, Mrs. Mitchell sought information to enable her to respond to questions which had been asked by members of the public. She felt that the answers given to her questions, particularly in the light of rumours she had heard within the Society, were not satisfactory or honest. That comment related specifically to answers made by Mr. Lovatt and Mrs. Harvey. She said that what she had heard of testimony given upon the Inquiry had confirmed her beliefs at that time, particularly her feeling that the decision to return Kim to her parents' home was not really a "joint decision" as Mrs. Harvey and Mr. Lovatt stated.

Later there was a meeting of the Board and again Mrs. Mitchell felt the questions put by members of the Board and of the staff who attended were not fully answered. From the context of her testimony, I believe this was the Board meeting of December 15, 1977. She said she felt the answers given by Mr. Lovatt and Mrs. Harvey were not honest in that they gave to the Board the impression that the Society had acted properly in returning Kim to her parents' home. She said the answers were incomplete. She remembered particularly answers given in attempts to explain away discrepancies in various documents and reports.

Mrs. Mitchell said morale problems within the Society were a factor contributing to her decision to resign.

Mrs. Mitchell testified that towards the end of her employment, perhaps about the end of September, 1977, she spoke to Mr. Allen, then President of the Society, to advise him of the problem of communication between the Board and the staff. There is nothing to indicate that the Board undertook any remedial action after that discussion.

The Committee chaired by Mrs. Farina also noted the problem of communication between the Board and the staff. They wrote in their report, in part, as follows:

"We are told of poor relationships between staff and board, with little communication or real understanding of each other's roles, authority and functions. There seemed to be no clear channels of communication within the Society and no clear means by which board members can know or understand the working of the Society or the problems and needs of staff, including foster parents. We note especially that Board were not formally informed of the Popen case until it was reported in the press (December, 1977). There seems to be a repressive atmosphere and indeed, we found some staff members we interviewed stating to us that they were hesitant to come because of fear of reprisals against them. Whether this is so or not is less important than the fact that the feeling was present and was stated in these terms. There seems to be little feeling of loyalty or committment to the organization."

In similar vein, those members of the Board who testified upon the Inquiry spoke of the inability of the Board and its individual members to make any assessment of the manner in which the Society was performing its statutory obligation under the Act. They spoke also of an inability to assess the performance of duties by staff members particularly Mr. Lovatt.

I am sure that the Board's recognition of those inabilities existed prior to December, 1977. But there was no evidence that the Board did anything to seek to remedy the situation.

Mr. Allen's testimony shows that he was aware that the Society could have requested the Ministry to provide an assessment of the quality of the service provided by the Society. I presume Mr. Allen was not the only member of the Board or its advisors, particularly Mr. Lovatt, who was aware of that. During Mr. Allen's tenure on the Board no such request was made of the Ministry.

Mrs. Wood's testimony shows her interest in this area and her efforts to obtain an independent evaluation of the services provided by the Society.

That occurred in 1975 or 1976. The proposal was presented to the Board, but, on the evidence, it was not acted upon because of the imposition of the financial restraints by the Province of Ontario. There was no testimony to indicate that any effort to obtain any funds necessary to obtain such an evaluation was made or even contemplated by the Board.

That inability of the Board itself to assess the operation and performance of the Society and its staff, its failure to seek such an assessment by the Ministry and its failure to pursue vigorously Mrs. Wood's proposal for such an assessment existed notwithstanding that the Board, or at least some of its members, knew that the duties of the Board included evaluation of the Society's performance and the qualifications of its staff.

The Act requires every children's aid society to provide at least the standard of services prescribed by the regulations. The Act imposes on the board of directors of each children's aid society the obligation to govern that society. In my view those statutory provisions impose on the Board a duty to ensure that the services provided by the Society meet the requisite standards and that necessarily involves an evaluation or assessment of those services and, indirectly, of the persons employed by the Society to deliver them.

During Kim's lifetime the Board did not, for whatever reason, make, request or obtain any such assessment or evaluation other than what may have been incidental to Mr. Lovatt's regular reports. From what few I saw of Mr. Lovatt's reports to the Board they contained no such assessment or evaluation.

The Board does not stand alone in this area of criticism. Mr. Lovatt's reports were of no real assistance or guidance to the Board and perhaps even engendered an ill-founded sense of confidence or assurance. The Ministry, as represented by the Director of Child Welfare and the staff of the Ministry employed in the Child Welfare Branch did not during Kim's lifetime make any assessments or evaluations of the services provided by the Society or of the performance of any of its personnel, especially

Mr. Lovatt. During Kim's lifetime no one from the Ministry advised the Board of any problem within or shortcoming of the services provided by the Society.

I have mentioned earlier the booklet entitled "A Working Manual For Board Members of Children's Aid Societies."

Had the members of the Board read that manual it would have alerted them to a number of things in this area. The manual suggests various sources of information which might be used by a board of directors in evaluating the performance of a children's aid society.

One of those suggested sources of information was the local director's reports. I am satisfied that Mr. Lovatt did make regular reports to the Board. In light of the testimony presented upon the Inquiry, the sufficiency and accuracy of those reports may be suspect.

Copies of six of those monthly reports were filed as an exhibit upon the Inquiry. Each report, with one exception which had five lines on a second page, was one page or less in length.

The reports filed as an exhibit included those for September and October, 1976. Neither referred in any way to Kim's case. Even though the September report set forth the number of children who had come into the care of the Society and the number who had left such care and the number who had returned to their own homes, there was no mention that a child in care had died. Each spoke either of the "continuing developments in the work of the Child Abuse Committee" or "the current campaign to broaden the community's understanding of the issues in Child Abuse." One such reference was two lines long. The other was six lines long because it reported on a public meeting which had been held and a seminar for staff which was to be held.

There was no evidence to suggest that the Board ever attempted to go beyond or behind any report from Mr. Lovatt.

The manual suggests that it is a good idea for the local director to involve other staff in the

preparation and presentation of the reports. It would seem that that suggestion was not followed often, if at all, by the Society. Had it been, the Board might not have remained so unaware of the problems which the staff were experiencing or sensing. Perhaps then the confidence of the Board as to the financial management of the Society might have been reviewed. The Board might have inquired as to why the staff were expressing concern as to heavy workloads while the statistical records of the Society did not support that concern.

Another suggested source of information was the financial reports of a children's aid society. Here, at least in most of the years during which Kim lived, the Board would have derived some satisfaction. The cost of the services provided by the Society to the City of Sarnia and the County of Lambton, calculated on the basis of per capita of population, was among the lowest in Ontario. But in some of those years the Society incurred substantial deficits. There was no evidence to indicate that the Board undertook any particular effort to amend its procedures in the preparation of its budgets so as to avoid incurring any deficit. Preparation of the budget was left primarily to Mr. Lovatt, the President and the Chairman of the Finance Committee, but the budget was submitted to the Board for discussion and approval.

The minutes of the meeting of the Board held on January 6, 1976 are perhaps indicative of the manner in which Mr. Lovatt's reports were presented and received.

Under the heading "Local Director's Report" there is a summary of Mr. Lovatt's report upon the proceedings of a meeting on December 18, 1975 between some of the Ministry's staff and representatives of children's aid societies in Ontario. That summary described the guidelines and restraints to be applied in respect of 1976 budgets. A major restraint was a limit upon expenditures set at 5.5% above 1975 estimated, not actual expenditures. The summary effectively concluded as follows:

"The Minister stated that no exceptions would be made even in areas of high growth. It was also made clear that the Ministry

would not necessarily pick up in 1976 any deficits incurred during 1975.

This means that our agency's 1976 budget should be less than our 1975 actual, 5.5% of \$567,067 equals \$598,256. The advance estimated budget presented in November was for \$716,160. In order to stay within the 5.5% a cut of \$117,904 is necessary. This would require a reduction of 1/3rd children in care or a similar cut in staff. The other alternative is to cut the budget as requested knowing full well that we may have a deficit of some \$100,000 by the end of 1976."

Upon Mr. Lovatt's motion, duly seconded, his report was adopted.

The minutes contain no reference to any discussion of that report. There is no indication that the methods suggested by Mr. Lovatt as means to stay within the restraint evoked any comment or concern of the Board. That is surprising because his suggestions appear to be severe in relation to one programme of service or to staff complement.

Later in those minutes, under the heading "Finance Committee" there is mention of the dilemma of budget restraints and then the sentence "The proposed budget for 1976 was received item by item." That report was adopted unanimously. There was no indication as to what, if anything, was done to comply with the budget restraints.

There was no testimony to indicate that the Board was aware of the provisions of the Act and the regulations thereunder permitting an appeal from or review of any decision of the Minister whereby approval of any item of a proposed budget was withheld. *A fortiori* there was no evidence that any such application by way of appeal from or for review of any decision of the Minister was ever made or considered.

It is impossible to do other than speculate upon the outcome had any such application been made. As shown by the evidence and particularly its brief to the Ministry in March, 1975, the Board was aware of local conditions which would appear to have

justified expenditures increased beyond the limit set by the Province of Ontario. Indeed that brief was instrumental in securing approval for the employment of two additional staff persons in December, 1975. One was Mrs. Lo. But the contents of that brief were not used further by the Board.

Similarly the limits on any increase of expenditure in 1976 over 1975 was to be based on the estimated, as opposed to the actual expenditures in 1975. In 1975 the Society incurred a deficit. Its actual expenditures exceeded its estimated expenditure. The deficit in 1975 was such that, as shown in the extract from the minutes of the meeting of the Board on January 8, 1976 set forth above, Mr. Lovatt calculated that, if the Board adhered to the limit imposed, the budget for 1976 would provide for expenditures less than those actually made in 1975. That would have been an unrealistic and unattainable result.

The Board took no formal proceeding under the Act to present or advocate its position. It did present its dilemma to the Members of the Legislative Assembly representing the constituencies containing the City of Sarnia and the County of Lambton. Those representations were futile and were peremptorily and perfunctorily dismissed by the Minister of Community and Social Services when they were transmitted to him.

A child welfare review committee appointed under the Act may have taken a view different from that of the Minister's. But the Board did not seek the review. No testimony indicated any reason for not seeking the review. In my opinion it would have been appropriate for the Board to have proceeded formally and publicly under the Act to object to the Minister's refusal to provide the funds sought by the Society.

I voice this criticism of the Board with the full knowledge that the testimony upon the Inquiry does not establish a direct connection between any financial or budgetary problem within the Society and the way in which Kim's case was managed by the Society. Notwithstanding the absence of any direct connection between the two matters, I am of the opinion that there was in the Society during

Kim's lifetime a pervasive concern with financial matters and a tendency, if not an outright philosophy, to look at reduction of numbers of children in the care and custody of the Society as one possible means of alleviating financial pressures.

I am reinforced in this view by the final version of the report of the committee of which Mrs. Farina was chairman. A portion of that report when discussing Kim's return to her parents' home is as follows:

"Although both the family service file and the child care file indicate that the decision to return was made at this conference, the verbal statements made to us indicate that the basic philosophy of the family service department was to return children to their homes, and that this philosophy would usually overrule individual opinions."

Without the conscious knowledge or intention of anyone Kim may have been a victim of that situation.

That tendency or philosophy was not produced entirely in the City of Sarnia and County of Lambton. It was rooted in or nurtured by the Ministry.

My opinion as to the existence of that tendency is based on a number of matters mentioned or documents produced upon the Inquiry.

On December 16, 1975 the Director of the Children's Services Bureau, who was the Director of Children's Welfare, wrote to the presidents and local directors of children's aid societies in Ontario. He advised them of the fiscal restraints imposed by the Government of the Province of Ontario which would limit child welfare expenditure in 1976 by restricting any increase therein in 1976 to an amount equal to 5.5% of the 1975 approved budgets. He wrote that he was well aware that children's aid societies would have difficulty in planning to meet that limitation. He set out a number of tentative guidelines for consideration and discussion.

Among those tentative guidelines were the following:

"(7) Restriction on outside consulting fees only to those consulting expenses related to direct service.

(8) Program Review

(a) Review admissions criteria for screening purposes to control program growth, e.g. selective use of non-ward agreements.

(b) Review all children in care and have screening for placements in special facilities.

(c) More planning leading to independence at age of majority of Crownwards.

(d) . . .

(e) . . .

(f) Increase base caseload assignment per worker.

(g) Review caseloads to screen out inactive cases."

On January 13, 1976 the Director of Child Welfare wrote to the chairmen of the boards of directors of children's aid societies in Ontario. Again he stated the restraint by the Government of the Province of Ontario and wrote:

"We realize that program costs must also be controlled and we suggest that the following approaches might be helpful:

(a) Review open caseloads with a view to creating capacity for new cases by closing those cases where assistance is least required or,

(b) Achieving a net reduction in open cases where possible.

(c) Review the utilization of child care resources to determine if more economical alternatives are available.

(d) Increasing caseload assignments to staff where appropriate.

(e) Redefining responsibilities of middle management and supervisory staff where appropriate."

The meeting of the Board which should have been held in December, 1975 was convened on January 6, 1976. While the letter of December 16, 1975 from the Director of Child Welfare was not specifically mentioned in the minutes of that meeting, Mr. Lovatt reported on a meeting held on December 18, 1975. I have already set forth a portion of the minutes relating to that report. I enlarge upon that now for my present purposes.

With reference to Mr. Lovatt's report the minutes read in part that he had reported as follows:

"the following Budget Guidelines for 1976 were given:-

(1) C.A.S. Budgets will be limited to a 5.5% increase over 1975 Estimates not Actuals

(2) . . .

(3) . . .

C.A.S. are being asked to:-

(1) . . .

(2) . . .

(3) . . .

(5) . . .

(6) Reduce staff complement to what was on October 13 1975.

(7) Trim services by cutting back on admission of children into care, terminating wardships at 18 years of age, holding all child care rates to a 5% increase, not using professional services of lawyers, consultants, etc.

The Minister stated that no exceptions would be made even in areas of high growth. It was also made clear that the Ministry would not necessarily pick up in 1976 any deficits incurred during 1975.

This means that our agency's 1976 budget should be less than our 1975 actual, 5.5% of \$567,067 equals \$598,256. The advance estimated budget presented in November was for \$716,160. In order to stay within the 5.5% a cut of \$117,904 is necessary. This would require a reduction of 1/3rd children in care or a similar cut in staff. The other alternative is to cut the budget as requested knowing full well that we may

have a deficit of some \$100,000 by the end of 1976."

There is nothing in the minutes to indicate that there was any discussion of the report or that any action was taken to resolve the problem of financial constraint presented by Mr. Lovatt. The Board simply did nothing to meet what must have loomed as a crisis.

I should not let this criticism of the Board stand in isolation. The final item recorded in the minutes of January 6, 1976 is as follows:

"Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance.

Mrs. Harvey has had some conversations with Mr. Ray Wyrzykowski, Director of Legal Aid, re. applying for Legal Aid for Society Wards and Non-Wards involved in such cases. Mr. Wyrzykowski is looking into this possibility at present. Mr. Shafley moved that \$2,500.00 be set aside in case of serious need for the Director in his judgment, to seek legal assistance. Mrs. Berkoff seconded. Carried."

The reference in that motion to "the Director" was clearly a reference to the Local Director, Mr. Lovatt.

Notwithstanding the reference to consultants' fees in the letter from the Director of Child Welfare, the Board responded positively and promptly to the need for legal services expressed by Mrs. Harvey at that meeting. While it is not so stated in the minutes, the testimony upon the Inquiry was that the Board responded by drawing upon funds under its control and not subject to any constraint imposed by the Ministry or Government.

There was no testimony to indicate that at any time during Kim's lifetime any portion of the monies made available by the Board was spent in payment for legal services. Certainly none was spent in relation to Kim's case.

There was no testimony to indicate that the Board considered the matter of legal services at any time during Kim's lifetime other than on January 6, 1976.

Mr. Higgins did testify that during his period of service upon the Board, the Board had appointed a solicitor and he had had some input into the basic decision to appoint a solicitor. Mr. Higgins did not disagree with a statement of counsel cross-examining him that during Kim's lifetime he attended only one meeting of the Board. That meeting was held in April, 1976 about one month after his election as a member of the Board. The next meeting he attended was in September, 1976 after Kim's death. I am satisfied that the Board did not appoint or consider the appointment of a solicitor during Kim's lifetime.

To its credit, when the Board became aware of the involvement of the Society in Kim's life and death, it moved quickly and decisively in response to the publicly stated negative criticism of the Society's handling of Kim's case.

Mr. Allen, as President, convened a special meeting of the Board which was held on December 15, 1977 at 7:30 p.m. That meeting was well attended. Sixteen directors were present. Six, including Mr. Higgins, had indicated they would not be able to attend. At least twelve members of the Society's staff, in addition to Mr. Lovatt, were present.

From the minutes of that meeting which were produced upon the Inquiry, I am satisfied that Mr. Lovatt presented a written summary of the Society's management of Kim's case and that he elaborated upon it orally.

As I read the minutes of that meeting, I am not satisfied that the report, written and oral, was complete. It certainly was not entirely accurate. I make those statements on the basis of the evidence presented upon the Inquiry. Elsewhere in this Report, particularly in the chapters relating to the roles of Mrs. Harvey and Mr. Lovatt, I will discuss what I regard as inaccuracies in and omissions from Mr. Lovatt's presentation to the Board.

The entire meeting was devoted to Mr. Lovatt's report, his recommendations arising therefrom and general discussion related thereto, including responses by Mrs. Harvey and Mr. Lovatt to questions raised by members of the Board and of the staff.

Upon Mr. Allen's suggestion the Board unanimously passed a motion calling upon the Executive Committee of the Ontario Association of Children's Aid Societies to appoint a committee of three to review Kim's case and to make recommendations as to the future operation of the Society.

That committee was appointed in due course. For the purposes of this Report I have chosen to call it the "Farina Committee" because Mrs. Farina was selected as its chairman.

I am satisfied that prior to that meeting individual members of the Board, particularly Mr. Allen as President, expended considerable time and effort to ensure the presentation of Mr. Lovatt's report and the subsequent discussion and resolution. Mr. Allen had a preliminary discussion with the Executive Director of the Ontario Association of Children's Aid Societies to obtain his general advice upon the problem and agreement to respond favourably to a request to form a committee to review the case and the Society.

In my view, Mr. Lovatt's report to the Board as summarized in the minutes of the meeting did not indicate to the Board that Kim's case had been managed by the Society other than in a satisfactory manner in keeping with appropriate and usual procedures. It gave the impression that no valid criticism of the Society could be made as a result of its management of Kim's case.

Notwithstanding the errors and omissions which created the impression that the Society was blameless, the Board was not content. It determined to proceed with Mr. Allen's suggestion for a full, critical and impartial assessment of the conduct of the Society and its personnel in relation to Kim. It wanted to learn what the Society's personnel had done or had not done and what they should have done

or should not have done, as the case may be in relation to Kim's case. It wanted a quick but general assessment of the practices and procedures of the Society.

The Board, particularly those members who attended that meeting, are to be commended for the dispatch with which the meeting was convened and the independent review of Kim's case was begun and completed.

I am satisfied that the Board directed all of its employees to co-operate fully with the Farina Committee and to make all files and records relating to Kim's case available for its inspection.

I am satisfied that all members of the Board who attended that meeting wanted the review or examination of Kim's case to be thorough and untrammelled. There is nothing to suggest that any member who did not attend felt otherwise.

I am satisfied that the Board wanted not only a historical or technical review of Kim's case, but it wanted also an assessment of the quality of the services provided by the Society in Kim's case, including an assessment of the quality of the decisions made from time to time in Kim's case. They wanted that assessment to be made by persons highly skilled and qualified in the area of services to children provided by organizations such as the Society.

I am satisfied that the Farina Committee was able to make the appropriate examination and report.

Late in January, 1978 the Farina Committee gave to Mr. Allen an oral summary of its review and examination of the case.

That was the first indication Mr. Allen had that all was not quite well in the Society and that the situation would justify negative criticism. Until then he was reasonably confident that the Society would not come in for very extensive negative comment. There was no testimony to indicate that any other member of the Board felt otherwise prior to February 28, 1978.

A copy of the report originally prepared by the Farina Committee was given to Mr. Allen in Toronto on February 15, 1978. At the request of Mrs. Farina, Mr. Allen returned that copy to her and the report in that form was not presented to the Board.

However, on February 28, 1978 the members of the Farina Committee, together with two members of the Ministry's staff, met with the Board. Fifteen members of the Board attended. The Ministry personnel were the Director appointed under the Act and the Ministry's solicitor. The Farina Committee presented its written report and it was discussed by the Board in committee of the whole. Mr. Lovatt was present and took part in the discussion.

The report of the Farina Committee as presented to the Board differed in form and content from that given to Mr. Allen on February 15, 1976. Those differences are discussed elsewhere in the Report, particularly in those chapters dealing with the roles of the Farina Committee and of the Ministry.

The Board was shocked by the contents of the Farina Committee's report and by the discussion which followed its presentation to the Board. While members of the Board had had some concerns in the past generally in relation to the operation of the Society and the performance of services by its staff, none of them had entertained any thought that the affairs of the Society were in the state disclosed by the Farina Committee's examination and report or that the Society's handling of Kim's case would be so criticized.

At the conclusion of the Board meeting of February 28, 1978, several members of the Board continued a discussion with the members of the Farina Committee and the Ministry personnel.

That discussion was quite informal. Mrs. Farina was asked about it and replied:

"A. Yes. It was on the night that the Board had received and heard the Report and following that we went to Mr. McPhedran's home, it was well after twelve o'clock, it was quite late. There was Mr. Rutherford,

Mr. Macdonald, Mr. Petersen, Mr. Heath and myself and I would think about five Board Members, and I did hear Mr. McPhedran make the comment that 'we have been wanting something like this for some time' or 'this is what we've been wanting,' words to that effect. My interpretation of that was that they had realized the Society was not being well run and that they had needed some kind of evidence in order to take action and that this report, in fact, was that evidence, it gave them a lever."

Mr. McPhedran had completed his testimony and had not been asked any questions about any such comment. His testimony does contain a number of comments which would tend to support Mrs. Farina's interpretation of that comment. However a review of his testimony leads me to believe that such comment heard by Mrs. Farina was hyperbole.

The comments by Mr. McPhedran in his testimony to which I have just referred and the questions to which they form answers were as follows:

"Q. Mr. McPhedran, did you, either on a hearsay basis, or any basis, form an impression at that time [December 15, 1977] or subsequently that there was some internal disorder within the Children's Aid Society?

A. Well, I think there were various rumours brought to the attention of the Board from time to time on various, what might be described as internal matters in the operation of the Society, but really I felt there wasn't any hard evidence that one could attach to any of the rumours that did come forth."

That answer seems most closely to support Mrs. Farina's interpretation of what she heard on February 28, 1978.

Then, much later:

"Q. But at what point did it become apparent to you that there were some

questions about the way in which this Society was operating?

A. Really, it was rather like a thunder-bolt to me. Once Judge Meehan had made it a public issue in his chambers to the press and there had been a meeting I believe in December where Mabel Harvey and Bill Lovatt brought forward to the board their complete report on the Popen case to that point in time. I think up until that point I really wasn't, you know, fully aware that there could possibly be a problem given on that particular case and once the Farina Report had come down and it had recommended a Judicial Inquiry, then I think I felt it was quite necessary that given the observations that they had made, that you know, really we needed some assistance in operating the Society. I think subsequent to that the report that was written by Harry Zwerver made it quite clear to me that the Agency did need some assistance in ironing out some of the administrative problems and social welfare practice."

And shortly after:

"Q. Now you mentioned in response to Mr. Murray's questions that there was various rumours concerning problems which were brought to the Board's attention?

A. Well, over a period of time there had been, but I always felt that when these were discussed with the local director, we tended to get what I thought were totally satisfactory answers and there weren't any problems as a result of that, as far as I was concerned.

Q. Now, what nature were the rumours?

A. Well, they concerned various parts of the Society that had, in an operational sense, been going on. I believe there was something related to a camp that was held by the Society, there was also a problem of a group home which has some group home

parents that apparently were unsatisfactory and to my thinking at the time, these problems seemed to be resolved satisfactorily by the local management of the Society and that's really, although I could think about it afterwards.

Q. So you inquired and there didn't seem any cause for concern?

A. That's right. The information was brought to the Board and I really wasn't involved in that process at all...."

And still later:

"Q. And when you saw the report were you somewhat upset at the service being operated, the service being offered by the Lambton County Children's Aid Society?

A. It was for my own self, rather an enormous bombshell, I must say.

Q. Would that be the reaction of most of the people on the Board of Directors of the Children's Aid Society of the County of Lambton?

A. I would think it would be fair to say, but I would qualify that by saying I have really no knowledge of their own particular backgrounds in knowing about operative social legislation.

Q. I just want to know if they were upset?

A. They certainly were upset I would say, by and large no the question about that."

It is those latter responses that satisfy me that until mid-December, 1977 Mr. McPhedran and other members of the Board were unaware of the problems within the Society. Until then, as is reasonably to be expected, they had confidence in the report they received from Mr. Lovatt or other employees. Until then all of those reports had satisfied them that any rumour or suggestion of shortcoming within the Society was unfounded.

By December 15, 1977 their confidence was shaken and they acted appropriately. With the presentation of the report of the Farina Committee on February 28, 1978 the Board did receive what it wanted. It was a full, critical and impartial assessment of the conduct of the Society and its personnel in relation to Kim together with general comment on the state of affairs within the Society. It was prepared by qualified persons. Its authors recognized the limits which were to be placed on it by reason of the short period of time which was allowed for its presentation.

To persons such as Mr. McPhedran the period from December 15, 1977 to February 28, 1978 may have seemed a long time. Hence perhaps the reference to "some time" in one of Mrs. Farina's versions of what she heard.

A considerable portion of the Farina Committee's report deals specifically with Kim's case and the areas of concern found by the Farina Committee in the way that case was managed by the Society. I do not think the Board or any of its members might reasonably have been expected to have been aware of the details of the management of any case unless it were brought to the Board's attention in some way. Until December, 1977 Kim's case was not known to the Board.

However the Farina Committee's report expressed some quite broad concerns which that Committee had as a result of its examination and review of Kim's case.

One of those concerns was the apparent lack of involvement of the Society with other agencies and services in the community. I have commented upon that as I have reviewed various events in Kim's life. It would seem to me that the Board, representative of the community as it wanted to be and I think as it was, might reasonably have been expected to be aware of a lack of liaison between the Society and other social agencies.

A second concern expressed by the Farina Committee related to the qualifications of the staff of the Society and arrangements for in-service training and continuing education of staff. All of

those were matters which in my view should have been known, at least in general terms, to the Board.

From the testimony upon the Inquiry, I am satisfied that the Board was aware that it lacked knowledge as to how well the staff of the Society performed their various duties. A corollary to that is that the Board knew it lacked knowledge as to the qualifications of the staff.

Notwithstanding its awareness in this area the Board did not seek any assistance from the Ministry or the Ontario Association of Children's Aid Societies or elsewhere in an effort to obtain some assessment of the qualifications of the staff and the services provided. The Board did not act positively upon Mrs. Wood's suggestion for a review of the Society's operations in general. The Board apparently were swayed at that time by Mr. Lovatt's assertion that the Society could not afford it.

I would think that those members of the Board who attended that meeting on February 28, 1978 and who had been present when Mrs. Wood made her suggestion in 1975 or 1976 must have regretted the failure of the Board to act upon that suggestion when she made it. In saying that I do not mean that the particular organization mentioned by Mrs. Wood should have been consulted, but certainly the Board should have made a specific request to the Ministry or to the Ontario Association of Children's Aid Society to assist the Board by making the appropriate inspection of the operations of the Society and then giving appropriate advice to the Board.

There was no testimony to indicate that the Board had any knowledge of or required or encouraged any programmes of in-service training or continuing education for the staff. I think the Board might reasonably have been expected to be aware of and to require and encourage such programmes.

The Board does not stand alone in this area of criticism. Mr. Lovatt and the Ministry share responsibility with the Board for the absence of such programmes.

The Farina Committee commented upon other personnel problems. These included tensions between

professional and clerical staff, lack of leadership and direction by Mr. Lovatt, low staff morale, a poor relationship between the Board and the staff and an absence of channels of communication within the Society.

From the testimony upon the Inquiry I am satisfied that the Board was aware of some of these matters. In my opinion the Board should have been aware of all of them. The fault for this absence of awareness rests on the Board and Mr. Lovatt. Even those of which the Board was aware were not resolved. It would seem that the Board did not fully appreciate the depth or gravity of the personnel problems and the effects that could flow therefrom.

The Farina Committee commented upon the dearth of clear procedural directives and written guidelines within the Society. In the same vein it commented upon practices in the Family Services Department and upon the security of records. There was no testimony to suggest that the Board was aware of any problems in this connection. In my opinion they should have been. That it was not is the responsibility of the Board and Mr. Lovatt.

From February 28, 1978 onward the Board took prompt and effective steps to deal with areas of concern voiced by the Farina Committee. The Board received considerable assistance from the Ministry in those efforts.

On March 7, 1978 the Ministry appointed Mr. Harry Zwerver to be a Special Field Consultant to the Ministry and to be responsible for the operation of the Society. That appointment was made as a result of a request by the Board to the Ministry for assistance.

Mr. Zwerver's assignment was to assume responsibility for the overall administration of the Society and to assess its operations. Mr. Lovatt continued to be the Local Director of the Society.

Mr. Zwerver gave an oral interim report to the Executive Committee of the Board. At the request of that committee he reduced that report to written form under date of April 11, 1978.

In that report Mr. Zwerver, like the Farina Committee, noted a lack of knowledge of the provisions of the Act and, perhaps consequently, a number of failures by the staff of the Society to comply with those provisions. He also commented upon technical and administrative methods. Apart from my view as to the Board's obligation to ensure the provision of ongoing training and continuing education, the Board would not reasonably be expected to be involved with the technical and administrative details.

Like the Farina Committee, Mr. Zwerver noted an absence of appropriate policies and procedures for the provision of services by the Society. As I have indicated earlier it is my view that, subject only to any limitation resulting from the failure of the Ministry and of the staff of the Society, specifically, Mr. Lovatt, to fulfill their obligations, the Board bears responsibility for that absence.

Like the Farina Committee in its report, Mr. Zwerver in his testimony commented upon the relationship between the Society and other community organizations and services. He testified that he attended a meeting of the Child Abuse Committee held at Sarnia General Hospital. He observed that the roles of its own various departments and other services in the community, including police, were carefully set forth in the draft statement presented by the hospital as to its practices and procedures in reporting and handling child abuse cases. He said he was disturbed to note that the role of the Society was not "spelled out." He raised his concern with the Child Abuse Committee. He noted hesitation before others on that committee responded.

After that hesitation several persons at the meeting did speak. They said that the role of the Society was not set forth because it was felt that the Society could not be trusted to carry out its responsibilities. He was told that therefore the hospital chose to use intermediaries to ensure due performance of its duties and then to advise the Society of what had been done. He said the latter comment was made "by one of the medical people there and was also made by the representative of the Police Department."

He said persons at the meeting expressed anger or frustration about what the Society had done or failed to do about matters which they had referred to the Society as cases of actual or alleged child abuse. This particularly was in cases where the Society declined or were reluctant to become involved.

Mr. Zwerver while testifying was unable to recall the particulars of most of the examples cited at the meeting. He did recall one incident mentioned. He had investigated it and had found the criticism of the Society to have been valid.

It would seem to me that the Board, at least through its own members and their associations in the community, if not through Mr. Lovatt and other members of the staff, should have been aware of that failure of the Society to merit or have the respect and confidence of others providing social services to the community.

The Board must bear some responsibility for its lack of awareness of the true position of the Society in the community and in its relationship with the organizations or agencies with which the Society should have had close and good working co-operation.

Mr. Zwerver's report contained comment upon the function of the Board and some recommendations in relation thereto. He recommended the establishment of "a functioning Executive Committee" and "an active Services Committee." The words "functioning" and "active" are key words in that recommendation.

In his testimony upon the Inquiry, Mr. Zwerver said that various committees of the Society appeared to exist on paper, but he found them to be functioning poorly if at all. He said that he felt the failure of the Executive Committee to prepare for Board meetings, particularly in relation to major policy and service issues, led to unduly long and poorly organized Board meetings. He said that the Services Committee had failed to meet regularly and to keep the Board informed of service demands and complexities.

Mr. Zwerver testified that, while he was in Sarnia, the Services Committee of the Board began preparation of manuals of policies and procedures.

Some sense of the utter inadequacy of the written policies theretofore available in the Society is gained by looking at three documents. Two were produced to the Farina Committee when they asked for the policy and procedure manual of the Society. One of those two is entitled "Policies for Child Care Services" and is two pages long with four lines on a third page. The second of those two is entitled "Policies in Regard to Family Services" and is two pages long with nine lines on a third page. Each makes fleeting reference to children in need of protection. Neither contains the words "child abuse." Neither refers to child abuse as a distinct phenomenon meriting any special skills or care.

By comparison or contrast the third document, entitled "Guidelines for Practice and Procedure in Handling Cases of Child Abuse," was published by the Ontario Association of Children's Aid Societies in July, 1976. It is composed of sixty-nine pages of text with an additional fourteen pages of bibliography and audio-visual resources.

I am satisfied that upon receipt of Mr. Zwerver's report and various recommendations the Board responded adequately and set about correcting the deficiencies which he drew to their attention.

The Board co-operated fully upon the Inquiry. Perhaps because of some of the problems mentioned by the Farina Committee as existing in and prior to early 1978 some material which might have been of assistance to me could not be located in the offices of the Society.

While it was representative of the community and was comprised, at least to some degree, of men and women wishing to perform a valuable service to their community and to perform it well, the Board did not fulfill its obligations and the hopes of its members.

The responsibility for that failure lies on the Board and its members, on Mr. Lovatt and on the Ministry. In this chapter, I am concerned only with

the Board's responsibility. The responsibilities of the Ministry and Mr. Lovatt are discussed elsewhere.

I am satisfied that some members of the Board were not as much concerned with the affairs of the Society as they should have been. They were not aware of the implications of membership upon the Board. They were not interested enough to pick up from the Board's meeting room material which might have been of use to them in the performance of their duties. They did not regularly attend the Board's meetings.

I am equally satisfied that some, including Mrs. Wood and Messrs. Allen, McPhedran and Wryzykowski, were deeply concerned and involved in the affairs of the Society. They were good citizens who took membership on the Board as a serious and important responsibility. It may be that those were too few.

Even those latter members of the Board were not fully aware of the true state of affairs in the Society. Quite reasonably they and the Board as a whole relied upon Mr. Lovatt as a source of information and advice. Similarly they relied upon the Ministry as an additional source.

I have commented that December 15, 1977 was the date from which the Board began to realize or recognize that all might not be well in the Society. Nonetheless I am satisfied that they must at least have sensed that there were problems in the Society and that someone, the Ministry or Mr. Lovatt, was not keeping them fully apprised.

During Kim's lifetime, the Ministry made no reports of any sort to the Board. The Board must have known that the Ministry, as represented by the Director of Child Welfare, was not fulfilling its statutory obligation to advise and supervise the Society and to inspect its operations and records. But the Board did not approach the Ministry to ask for any such supervision or inspection. The Board did not approach the Ministry for advice or assistance even when, in 1975 or 1976 upon discussion of Mrs. Wood's suggestion, it recognized its own inability to do something which it felt was required.

It would be more difficult for the Board to detect the insufficiency of or any inaccuracy in the information and advice furnished to the Board by Mr. Lovatt. But the Board was aware of some problems and apparently felt no need to go beyond Mr. Lovatt to seek their resolution.

The Board did take some steps to seek to correct some of the problems of which it was aware, but did not ensure that those steps were effective and ongoing.

Mr. Zwerver testified that over a period of years before coming to Sarnia in 1978 he had heard various comments of a general nature that all was not well in the Society. He said he heard such comments at various meetings of committees and professional persons. It is surprising that the Board would not be aware of that sort of comment and the general reputation of the Society.

If the Board was unaware of the true state of affairs because of a lack of knowledge of its role and its duties, obligations and powers that lack of knowledge of its role is, in part, its own fault.

There was some testimony as to an orientation meeting for new members of the Board, but, especially on Mr. Higgins' testimony, that was not an effective means to instruct new members as to their responsibilities. There was no evidence of any ongoing programme to keep members of the Board informed generally as to their duties and obligations. I am satisfied that, like Mr. Allen, they learned by depending on one another, particularly depending on those who had been members of the Board for longer periods of time. That is not a satisfactory means of learning. They would continue the mistakes of the past. With all respect for the members of the Board it could very easily have been, and in some ways surely was, a case of the uninformed informing the reinforced.

In my view, each member of the Board should have received, initially, at least three items, the Manual, the statute and the regulations, and then should have received amendments or revisions as necessary. The Board failed itself, its staff and

the community generally by not ensuring that each member of the Board had those materials.

Mere possession of the material is not enough. The Board should have ensured that in some way every member of the Board received some instruction or education in relation to the performance of service as a member of the Board. In not ensuring the provision of that instruction the Board again failed itself, its staff and the community.

In various areas the Board failed adequately to fulfill its duties and responsibilities. Thus it failed Kim.

Chapter XVIII

The Role of Personnel of the Society

In preceding Chapters in the Report I have examined in some detail and expressed comment upon the roles of various elements and senior officers of the Society. They are primarily Chapters XIV to XVII, inclusive.

In other Chapters, particularly those describing events during Kim's life and at about the time of her death, I have mentioned other persons associated with the Society. For the most part those persons were employees of the Society.

I want now to review and comment upon the performance by those people of their various roles in Kim's life. It is convenient for me to deal with them in the order in which they first became aware of or involved in Kim's case.

Thus I shall deal firstly with Mrs. Audrey Lillian Dick, a case worker with the Society.

Mrs. Dick was the first employee of the Society to become aware of Kim. That was on June 17, 1975 when Police Constable Gander saw her at the Society's office and advised her of the telephone call to the Sarnia Police Force to the effect that Kim had been or might have been abused.

Mrs. Dick's involvement at that time was minimal. She promptly and properly fulfilled the immediate requirements of the case by assigning Mrs. Sandra Lynn Saul, a case worker, and Mrs. Winona Hoad, a volunteer with the Society, to accompany Police Constable Gander to investigate.

Upon all of the evidence I am satisfied that that was an appropriate response to Police Constable Gander's report. It was appropriate both

in its nature and in its promptness. No one expressed any criticism of Mrs. Dick to that point.

When Mrs. Saul and Mrs. Hoad returned to the Society's offices after seeing Kim, Annals Popen and Jennifer Popen, Mrs. Saul spoke briefly with Mrs. Dick to advise her of the nature of the visit and its results and the report she was making to Mrs. Harvey, who was the immediate superior of both Mrs. Dick and Mrs. Saul. Mrs. Saul advised Mrs. Dick of her great concern about the case.

On June 17, 1975 Mrs. Dick wrote, in long-hand, some notes which, much later, were transcribed in typewritten form and became part of the recordings of the Family Services Department of the Society in relation to Kim's case.

Unfortunately Mrs. Dick, like Mrs. Saul and Mrs. Harvey, was unable to explain satisfactorily where her handwritten notes were from June 17, 1975 until sometime after August 31, 1975 when they were located somewhere and transcribed.

In my view Mrs. Dick deserves some very mild criticism for her failure to ensure that her notes were transcribed into the permanent records of Kim's file.

However, in all of the uncertainty of what happened to her notes, she was a victim of the poor organization and administration of the Society. She assumed that her notes would be given to Mr. Harold Carter, the worker who Mrs. Harvey said was likely to be assigned to the case. She had spoken to Mrs. Harvey so that she could note in the log of the short service team of workers that she and that team of workers would not be dealing with the case.

I am satisfied that Mrs. Harvey made it clear that she was assuming personal responsibility for all other procedures that would be involved in opening the case and assigning it to Mr. Carter. Mrs. Dick then had no direct responsibility to do anything more about it.

But, on the testimony, I am satisfied that good practice by Mrs. Dick at that time would have included assurance that the information she received

that day was properly recorded in the files of the Society for the assistance and information of Mr. Carter and any other worker who might at any later time be involved in the case.

I am equally satisfied that such an expectation of Mrs. Dick was far above the level or standard of practice of social work then prevailing in the Society.

I am satisfied that Mrs. Dick bears no responsibility for the failure of the Society to open a file for Kim's case in June, 1975 and to take appropriate action to investigate and deal with the case at that time.

Mrs. Dick's only other active involvement with Kim's case was on August 31, 1975 when she was summoned to St. Joseph's Hospital. She responded promptly to the call for assistance.

On the evidence I am satisfied that Mrs. Dick's actions at that time were appropriate and effective. Kim came into the care of the Society and remained in a place of safety.

There was some suggestion that Mrs. Dick's use of what was called a non-ward agreement was inappropriate. It was suggested that she might more properly have moved to apprehend Kim under the provisions of The Child Welfare Act.

That suggestion was not strongly urged. I am not prepared to express any criticism of Mrs. Dick's use of a non-ward agreement. I am satisfied that Annals Popen and Jennifer Popen were willing parties to that agreement and there was nothing in the way of duress or pressure upon them. Mrs. Dick had explained the agreement fully to Annals Popen and Jennifer Popen.

Mrs. Dick's notes of her actions and observations on August 31, 1975 were duly and appropriately transcribed into the recordings for Kim's file.

Mrs. Dick's only other contact with Kim's case was as a witness upon the hearing of the

Society's application for wardship of Kim on February 25, 1975.

Mrs. Saul and Mrs. Hoad were the next persons associated with the Society to have contact with Kim's case. Their only involvement was on June 17, 1975.

Mrs. Hoad, as a volunteer, in a sense merely accompanied Mrs. Saul and she had no direct responsibility to do more. She assisted Mrs. Saul in the examination of Kim for external signs of injury or abuse. In my opinion Mrs. Hoad adequately did all that was or might have been expected of her.

Mrs. Saul's response to the assignment of the case to her by Mrs. Dick was prompt and provided a good basis for performance of the investigation and management of the case which should have been undertaken immediately by the Society. Subject only to some slight reservation I will express, Mrs. Saul bears no responsibility for the failure of others to conduct such investigation and management.

On all of the testimony I am satisfied that Mrs. Saul performed her assigned duties quite well. With Police Constable Gander and Mrs. Hoad she located Kim. She spoke with Mrs. Fay Popen. She examined Kim. She spoke with Annals Popen and Jennifer Popen. She reported promptly, both orally and in writing, to Mrs. Harvey, her immediate supervisor. Her report, particularly the oral portion, contained a quite adequate and detailed review of her actions and observations on June 17, 1975 together with an expression of some comments indicating her assessment of the situation based on her limited contact and opportunity to observe.

Her report to Mrs. Harvey showed that she viewed the case with a great deal of concern. She thought it was serious and would require involvement of the Society for an extended period of time. She had made and reported some observations to support her concern and opinion.

Dr. Turner expressed the view that Mrs. Saul should have expressed her assessment or evaluation of the case somewhat more thoroughly than she did in the written record she prepared. However,

even in expressing that view, Dr. Turner acknowledged that, by its very nature and her suggestion that close supervision be provided, Mrs. Saul's report showed that she viewed the case as being serious.

In her testimony upon the Inquiry Mrs. Saul expanded upon the written record she had prepared to say that she had, in her oral report, recommended to Mrs. Harvey that the case was such that it should be immediately transferred to a long term worker. Clearly Mrs. Saul's assessment was that the case would require the involvement of the Society for a long period of time as well as the assistance of others, such as The Lambton Health Unit. In her oral report Mrs. Saul had particularly directed Mrs. Harvey's attention towards Jennifer Popen who, in Mrs. Saul's view, was the dominant spouse in the Popen home.

I am satisfied that, while Mrs. Saul felt she had accomplished much on June 17, 1975, she at the same time recognized that much more remained to be done. It was reasonable for her to assume that Mrs. Harvey, as Supervisor, and Mr. Carter, an experienced case worker, would ensure that everything necessary was done.

In the same manner as Mrs. Dick, Mrs. Saul deserves some very mild criticism for failing to ensure that her notes made on June 17, 1975 were promptly and accurately transcribed into the permanent record of Kim's case. She too was the victim of the Society's deficient organization and administration. She too was entitled to rely on Mrs. Harvey's assumption of responsibility for the continuing or further handling of the case. Mrs. Saul was, on June 17, 1975, entitled to feel that she had completed, to Mrs. Harvey's satisfaction, all that was expected of her.

But good practice, superior to that then prevailing in the Society, would have required her, like Mrs. Dick, to ensure that her notes and report formed a part of the permanent record of Kim's file.

On the testimony I am satisfied that Mrs. Saul thus does bear some responsibility for the failure of others in the Society to pursue the

investigation and management of Kim's case on and immediately after June 17, 1975.

That responsibility is slight and perhaps might be described as indirect. On the evidence I am satisfied that good practice in child welfare and in cases of child abuse requires that there be a case conference at various critical points in the management of each case. One such critical point is the time at which one worker assumes from another the responsibility for a case. Preferably at least three persons should attend the case conference at that point. The three are the two workers involved, outgoing and incoming, and their supervisor.

Despite testimony, such as that of Mr. Lovatt, that such case conferences were a part of the usual practices and procedures of the Society, I am not satisfied that they were. Thus, in a sense, Mrs. Saul might be excused from the responsibility I have placed upon her.

However, notwithstanding the lack of adequate practices within the Society, I remain of the view that Mrs. Saul does bear that responsibility. She was a well educated person who had served as a social worker with the Society since August, 1973. She also had had some prior somewhat related work. As a social worker she had a duty to keep herself informed of usual and accepted practices and procedures. Thus she should have been aware of the practice of case conferences surrounding transfers of cases among workers in a children's aid society. She should have sought out Mrs. Harvey or Mr. Carter to ensure that there had been an effective and satisfactory transfer of the case from her to Mr. Carter.

That is the basis of my criticism of Mrs. Saul's performance of her duties.

For all practical purposes she took no further part in Kim's case after June 17, 1975 when Mrs. Harvey assumed direct responsibility for opening the case and assigning it to Mr. Carter. In my opinion, even though relieved of ongoing active participation in Kim's case, Mrs. Saul should have taken it upon herself to approach Mrs. Harvey and Mr. Carter with a view to having such a case conference.

My criticism of Mrs. Saul is diminished by my recognition that the persons who should have been involved in any such conference and the organization of the Society may have made it difficult for Mrs. Saul to make such an approach. She was a relatively junior and new member of the staff of the Society. Mr. Carter was an experienced and long-time employee. Mrs. Harvey was a dominant and assertive supervisor. Mrs. Saul might very well be excused for deciding, if she had even thought about it, against making such an approach. It is understandable that she might feel that such an approach by her might be regarded by Mrs. Harvey and Mr. Carter, or either of them, as being precocity. It is understandable that she might feel that either Mrs. Harvey or Mr. Carter would convene such a conference and that it was not her duty to do so.

Dr. Turner in his testimony recognized some of what I have mentioned. He said he would have expected that a social worker in Mrs. Saul's position after June 17, 1975 might have made some inquiries. He acknowledged that local factors in a society would have a bearing upon it. He did not seem to expect more of Mrs. Saul.

However had she approached Mrs. Harvey and Mr. Carter the Society might have done some or all of the things which should have been, but were not done immediately after June 17, 1975.

This assignment by me of responsibility to Mrs. Saul does not in any way reduce my criticism of Mrs. Harvey's failures to perform her duties between June 17, 1975 and August 31, 1975.

Dr. Turner expressed some criticism of Mrs. Saul's written record of the events of June 17, 1975. He said she had noted that Kim, who had been content when held by Mrs. Fay Popen, became upset when held by Jennifer Popen who tried to feed her. Dr. Turner made that reference when he was commenting upon what he perceived to be the absence of diagnostic or evaluative assessments from the recording in the Society's file on Kim. He said Mrs. Saul's recording was deficient in that regard.

I accept Dr. Turner's assessment as a correct appraisal of Mrs. Saul's recording. Again I

temper my expression of criticism of Mrs. Saul by noting that Dr. Turner's testimony related only to the written record. In the situation, as it existed on June 17, 1975, that written record supplemented or was supplemented by Mrs. Saul's oral report to Mrs. Harvey on that day. I am satisfied that Mrs. Saul fully apprised Mrs. Harvey of her concerns for Kim and her belief that the case required long term attention to be begun at once by the Society.

Furthermore, Mrs. Harvey, the Supervisor, asked for no more and accepted the validity of Mrs. Saul's concerns and opinion.

Mrs. Saul had one further opportunity to approach Mr. Carter about Kim's case. Police Constable Gander testified that he had telephoned the Society and spoke with Mrs. Saul on July 2, 1975. He had not heard from anyone at the Society and he wanted to know what the Society was doing. Mrs. Saul merely advised him that she had no further responsibility for Kim's case which had been assigned to Mr. Carter, who had not yet done anything.

It would seem that, had she been so inclined, Mrs. Saul could have mentioned Police Constable Gander's telephone conversation without offending Mr. Carter. If nothing else, it would have alerted Mr. Carter to the possibility that he was responsible for a case which, for some reason, had not yet been transferred to him.

After August 31, 1975 two more members of the Society's staff became directly involved in the management of Kim's case. They were Mrs. Mary Isobel Kirby, a worker in the Children's Services Department, and Mr. Harold Raymond Carter, a worker in the Family Services Department. Through Mrs. Kirby, Kim was placed in the home of Mr. and Mrs. Adrian Cecile.

Mrs. Kirby was responsible for the physical removal of Kim from hospital on September 5, 1975.

I have already expressed, and I repeat, some criticism of the arrangements made for Kim on September 5, 1975. On that date she was placed in one foster home, but on September 10, 1975 she was moved to the home of Mr. and Mrs. Cecile. Mrs. Kirby

recorded that that change was made because the first foster home was very near the residence of Kim's parents. It would seem to me that the proximity of the first foster home to the Popen home should have been known and appreciated on September 5, 1975. It would appear to have been error or oversight on the part of Mrs. Kirby and whosoever assisted her in the selection of a foster home for Kim.

That would not appear to have had any bearing upon the development of Kim's case within the Society. Certainly it did not contribute to the tragedy that was to come.

In any event the matter was quickly corrected. I am satisfied that the foster home provided to Kim by Mr. and Mrs. Cecile was an excellent choice.

Mr. and Mrs. Cecile impressed me as two persons who, with their own children, became lovingly and caringly interested in Kim and her welfare. They provided to her a home in which she received love and care without abuse and neglect. Mr. and Mrs. Cecile and their family did this even though Kim was not always, particularly in the earlier months of her living with them, an easy child to live with. They did this at the expense of some strain upon themselves, particularly on Mrs. Cecile.

It would seem that, within the structure of the Society, Mrs. Kirby performed her duties well. She arranged medical examinations and treatment of Kim. She arranged Kim's visits with her parents. She maintained a regular written record of her actions and observations.

As to recordings, Mrs. Kirby's appear to me to be concise and to have been prepared in much shorter segments than those of Mrs. Lo and Mr. Carter. Each day or event seemed to merit a separate entry in Mrs. Kirby's recording.

Dr. Turner did express some criticism of all of the recordings in the files of the Society. He did not except Mrs. Kirby's recording from his observation that recordings in the Society's files lacked a diagnostic and evaluative component. He said they were simple reporting of events without any

indication of how she interpreted what she observed and without comment as to what further information she wished she had. He did not regard them as constituting a professional case dossier. They did not reflect the goals set and the degree of achievement of those goals from time to time. They did not identify areas of concern or difficulty in the case, their cause and how they might be overcome. They did not contain an adequate analysis or interpretation of the observations.

I temper my criticism of Mrs. Kirby's recording because, on the evidence as to the predominant position of the Family Services Department in the Society, I am satisfied that that Department assumed the right and the duty to manage Kim's case apart from the details of her day-to-day personal care in the foster home provided by the Society.

Furthermore, there was no testimony to suggest that the Supervisor of the Children's Services Department of the Society or anyone else had advised Mrs. Kirby that her recordings were deficient.

I except from that latter comment the testimony to the effect that Mrs. Kirby had made no entry in that Department's file on Kim's case in respect of anything which happened after Kim's return to her home on May 27, 1976 and that, at some later time, it had been necessary to add some items to that recording.

That failure by Mrs. Kirby to continue the file in the Children's Services Department of the Society was not noted by anyone until long after Kim's death when Mr. Charko, of the Ministry of Community and Social Services, commented upon it. Mrs. Harvey then transposed into the file in the Children's Services Department some material from Mrs. Lo's recordings in the file in the Family Services Department for the period from April 15 to August 11, 1976. Mrs. Kirby was not alone in her belief that the file in the Children's Services Department should be closed when Kim was returned to her home.

While Mrs. Kirby's recordings may not have met the standards which might ordinarily be expected of a qualified and experienced social worker, the

deficiencies in those recordings did not, in my opinion, have any adverse effect upon the management of Kim's case by the Society generally and by Mrs. Harvey, Mr. Carter and Mrs. Lo particularly.

I am supported in that view by the testimony as to the incident in Mrs. Harvey's office in February, 1976 when Mrs. Kirby joined with others to express strong resistance to any suggestion that Kim be returned to her parents' home. The resistance was cavalierly dismissed by Mrs. Harvey.

I am further supported by the absence of testimony that anyone, other than Mrs. Kirby and her Supervisor in the Children's Services Department, read Mrs. Kirby's recordings during Kim's lifetime. There was a similar lack of testimony of any effort by Mrs. Harvey, Mr. Carter and Mrs. Lo to obtain Mrs. Kirby's opinion on any aspect of Kim's case. The only time her opinion was sought was in late April and early May, 1976 and that was in relation to the selection of a time for the implementation of Mrs. Harvey's earlier decision to return Kim. That earlier decision had effectively limited the scope of any opinions that Mrs. Kirby might express.

Mr. Carter was assigned by Mrs. Harvey as the worker in the Family Services Department of the Society who would have direct responsibility for Kim's case. That assignment, while recorded as having been made on August 31, 1976, was not made until Tuesday, September 2, 1976, at the earliest.

Mr. Carter retained that responsibility until the completion of the hearing of the Society's application for wardship of Kim. That hearing was on February 25, 1976. I am satisfied that Mr. Carter prepared only one lengthy recording in Kim's file and it was expressed by him to cover the period of time from September 1, 1975 to February 29, 1976. That recording was not made until after Mrs. Harvey relieved him of his responsibility for Kim's case.

Mr. Carter was one of the senior and most experienced social workers employed by the Society. Nonetheless he did not perform his duties as well as one might have reasonably expected.

He bears no responsibility for the errors or omissions which resulted in the failure of Mrs. Harvey's intention, announced on June 17, 1975, to assign Kim's case to him. He simply was not aware then of Kim's case and of Mrs. Harvey's intention.

In the same way that Mrs. Saul is to be criticized for not speaking to Mr. Carter after Police Constable Gander's telephone call on July 2, 1975, Mr. Carter is to be criticized. He testified that Mrs. Betty Hewitt, a hospital nurse, had spoken to him about Kim. He believed that was in May or June, 1975. He simply informed Mrs. Hewitt that he was not involved in the case. He said he learned, in some unstated way, that the case was "active within the intake department" of the Society. There was no indication he spoke to anyone in the Society about the case. Had he done so he might have learned that Mrs. Harvey had intended to assign the case to him, but something prevented the completion of the assignment and the case remained unattended and unassigned.

In fairness to Mr. Carter, Mrs. Hewitt denied that she had spoken to him about her observation of Kim with black eyes and bruised face in June, July or August, 1975. She was unable to be more specific as to time. It may be that he was mistaken as to the date of any conversation with Mrs. Hewitt for he certainly did speak with her about Kim's case after August 31, 1975.

In another area of his testimony Mr. Carter said he first learned of Kim's case in August, 1975, when Police Constable Gander mentioned it during a discussion of another matter. He fixed the date of that visit as August 29, 1975 by reference to the entry in the Society's file. I repeat my statement in Chapter VI of the Report that I do not accept that testimony and recording as being accurate.

Even Mr. Carter himself while testifying illustrated that the recordings in the Society's files were not fully reliable. Sometimes they were prepared long after the time to which they related. The typewritten recordings were not always checked by the author of any note used as the basis for the recordings. Items Mr. Carter had prepared for

inclusion in the recording were missing; apparently they were not transcribed.

Mr. Carter testified that the recording under date of August 29, 1975 was not entirely accurate and was not in the sequence in which he recalled having dictated it.

I have noted the form of that recording. It is written in the third person. The style is different from that of the longer recording for the period from September 1, 1975 to February 29, 1976. Mr. Carter's initials do not appear in the margin, but do appear in the body of the short text.

The reference in the short text that "no report was received" from the police satisfies me it was written after August 29, 1975.

I have found that the item under date of August 29, 1975 was neither written nor dictated by Mr. Carter.

Mr. Carter's direct responsibility for Kim began on September 2, 1975 when her case was properly assigned to him. At that time Kim was in the hospital and in the care of the Society. The Children's Services Department of the Society was responsible for her day to day care following her discharge from hospital.

Mr. Carter co-operated with members of the Sarnia Police Force in their investigation of the matter. The police officers' main purpose was to determine whether or not whatever had happened to Kim constituted any offence in respect of which a criminal or quasi-criminal charge should be laid. That would be periphereal to Mr. Carter's main purpose.

As the worker in the Family Services Department of the Society, Mr. Carter, subject only to Mrs. Harvey, Supervisor of that Department, and Mr. Lovatt, Local Director of the Society, was, because of the accepted organization of the Society, responsible for the over-all management of Kim's case within the Society other than the portion for which the Children's Services Department was directly responsible.

In that capacity, Mr. Carter was responsible for the conduct of the investigation of the matter on behalf of the Society. The main purpose of that investigation should have been to try to determine what had happened. He should have attempted also to determine who had been involved and what had caused any act to be done.

Only after a complete investigation could the Society have determined whether its services were necessary or desirable to protect Kim or to assist her parents in their role in relation to her.

I am satisfied that Mr. Carter, quickly and correctly and in keeping with good practice, assessed Kim's case as one which should be presented to the Provincial Court (Family Division) of the County of Lambton which, in this Chapter, I shall simply call the "Court." That was so even though Annals Popen and Jennifer Popen had executed the non-ward agreement and other documents placing Kim in the care of the Society and authorizing the Society to obtain information from various sources.

The testimony was not clear to establish when Mr. Carter caused an application to the Court to be prepared and notice thereof to be served upon Annals Popen and Jennifer Popen. The application was initially presented in the Court on September 8, 1975, but the hearing was adjourned to enable both the Society and Kim's parents to prepare for it. The application sought an order of the Court declaring Kim to be a child in need of protection under the terms of The Child Welfare Act and making her a ward of and committing her to the care and custody of the Society.

I am satisfied that it was appropriate and necessary for the Society to seek an adjournment of the hearing of its application from September 8, 1975. In my opinion it would not have been reasonable to expect Mr. Carter to have completed his investigation of the matter by that time. The police investigation had not been completed.

It is to be noted too that Mr. Lovatt appeared in the Court with Mr. Carter on September 8, 1975. Mrs. Harvey acknowledged that she too was likely present. Clearly Mr. Carter had Mr. Lovatt's

concurrence. Mr. Lovatt specifically requested an adjournment.

I am satisfied that the adjournment from September 8, 1975 was necessary also to enable the Society to attend to other matters in preparation for the hearing.

The initial adjournment was to October 29, 1975, which would seem to have been more than ample to enable Mr. Carter and the Society as well as Kim's parents to prepare for the hearing and to do whatever was required to be done before the hearing.

In Chapter VI I summarized in some detail the various subsequent appearances in the Court in relation to the Society's application.

On October 29, 1975, Mr. Higgins, acting for Annals Popen and Jennifer Popen, sought and obtained a further adjournment to January 19, 1976. From my reading of the transcript I am satisfied that Mrs. Harvey, appearing on behalf of the Society, did not oppose Mr. Higgins' request for an adjournment even though witnesses had been subpoenaed and would be inconvenienced.

I infer that by October 29, 1975, Mr. Carter had done all that Mrs. Harvey expected or wanted him to do in investigating the matter and preparing for the hearing. I infer that both Mrs. Harvey and Mr. Carter felt that the Society was ready to proceed with the hearing of its application on October 29, 1975.

Mr. Carter did not speak out against Mr. Higgins' request for the adjournment. I do not criticize him for that. In my view he bears no responsibility for the adjournment from October 29, 1975, but that is not to say that I feel he had adequately prepared the application for presentation in the Court on that day.

On January 19, 1976 the matter was adjourned again. This time, in my opinion, Mr. Carter does bear some responsibility in that, in part at least, the adjournment came about because of the absence of Dr. Singh, a witness whose testimony was felt to be important to the success of the Society's

application. There was no testimony to indicate that Mr. Carter made any effort on or about October 29, 1975 to ensure that Dr. Singh would be able to attend on January 19, 1976. There was no testimony as to when Mr. Carter, responsible for the preparation of the Society's application, which responsibility included responsibility to ensure the attendance of witnesses, sought to advise Dr. Singh of the adjournment to January 19, 1976. Mr. Higgins was not aware of any problem until January 19, 1976 and resisted Mrs. Harvey's suggestion that the testimony upon the application, save that of Dr. Singh, be heard and the hearing concluded later on Dr. Singh's return.

In my view Mr. Carter does not bear full responsibility for that adjournment. Mrs. Harvey, as his supervisor and as the Society's court worker responsible for the presentation of the application to the Court, bears that responsibility as well.

In my opinion the lengthy adjournment from January 19, 1976 was entirely unnecessary. Either that date should not have been selected without first assuring that Dr. Singh would be available or, as soon as Mr. Carter learned of any conflict in dates, something he should have done long before January 19, 1976, he should have attempted to resolve the conflict. If nothing else, Mr. Higgins should have been informed and, if need be, an application might have been brought to the Court to obtain another appointment before or very soon after January 19, 1976. In my view Mr. Carter was responsible for the failure of the Society in that regard.

From the foregoing it would seem that Mrs. Harvey at least was satisfied that Mr. Carter had done all that was necessary or desirable to enable her to make an adequate presentation of the Society's application to the Court. That satisfaction of his Supervisor may tend to mitigate my criticism of Mr. Carter in this regard.

I do not share Mrs. Harvey's satisfaction as to Mr. Carter's performance of his duties. In my opinion Mr. Carter's investigation and preparation were inadequate. He imposed some restrictions upon himself because of his own self-induced misconception of the effect of the investigation conducted by the

Sarnia Police Force. He accepted other restrictions purportedly imposed upon him by Mr. Higgins.

Mr. Carter testified that he had had "limited involvement" with Kim's parents other than co-operating with Mrs. Kirby to arrange their visits with Kim. He went on to say:

"...other than that case work practices could not be established because I was advised at that point by Constable Wyville that they would be bringing charges, criminal charges, against Mr. and Mrs. Popen."

He said that he originally understood that the charges against the parents would be under the Criminal Code, but he later learned they were to be under The Child Welfare Act.

That was, to me, a clear acknowledgement that Mr. Carter recognized that he had not adequately fulfilled his responsibilities.

He had earlier said that his duties included preparation of "social histories from the parent[s]."

He went on to say that he had seen Kim's parents only "infrequently" during their visits with Kim. He said that normally he should have been working with Kim's parents, but he did not do so "because the seriousness of the abuse had not been deliberated" and the identity of the perpetrator of the abuse had not been decided. He added "...perhaps I was hesitant or had some personal reservations at that point of view."

Those responses by Mr. Carter were directed particularly to the period from September 2 to October 29, 1975, but the testimony satisfied me that the situation remained relatively unchanged until after the Society's application was heard and determined on February 25, 1976.

In my view the possibility that the police investigation might lead to charges against Kim's parents should not have interfered with Mr. Carter's establishment and maintenance of normal case work

practices. In my view even the laying of such charges should not have interfered therewith.

It was Mr. Carter's own decision not to establish those case work practices early in September, 1975. In my view that was a gross error on his part.

There was no testimony that he sought or received any advice on that subject at that stage. Thus it is my opinion that, subject only to the responsibility Mrs. Harvey bears as his Supervisor, he alone was responsible for the failure of the Society to provide adequate service to and management of Kim's case.

Mr. Carter's testimony revealed that he felt there was some association between the adjournments of the hearing of the Society's application and the lack of a conclusion to the charge against Annals Popen and Jennifer Popen laid by the police. It may very well be that that was so in fact, but it is no excuse for Mr. Carter's allowing it to restrict him in performance of his duties. That he permitted that to happen is his own responsibility.

That state of affairs appears to have continued without any outside influence upon Mr. Carter until January 16, 1976, Mr. Carter testified that on January 16, 1976, Mr. Higgins had told him that he, Mr. Carter, was not to speak to Annals Popen and Jennifer Popen. He said that he was still preparing for the hearing scheduled for January 19, 1976 and so needed information from them. Later, prior to the hearing on February 25, 1976, Mr. Higgins consented to Mr. Carter's visiting the Popen home, but imposed the restriction "Don't quiz them."

Mr. Carter testified that he was "legally restricted" by Mr. Higgins' original denial and later limitation of his right to visit and speak with Annals Popen and Jennifer Popen. He said not carry out "any routine or normal case work practices that one would do".

All of that being so, I am satisfied that Mr. Carter had not properly prepared the Society's application for hearing on October 29, 1975, when Mrs. Harvey was apparently ready to present it, or on

January 19, 1976 when Dr. Singh's absence was the reason given for adjournment.

While Mrs. Harvey, as his Supervisor and as the Society's court worker, may share it with him, I think Mr. Carter is responsible for his failure to complete properly the preparation of the Society's application.

That lack of preparation related to the failure to conduct normal case work practices, including interviews with Annals Popen and Jennifer Popen to obtain social histories and current information for the benefit of the Court and the Society and, most importantly, for the benefit of Kim.

None of that was really done even before the hearing was held on February 25, 1976. Mr. Lovatt, in his testimony, acknowledged that the Society knew very little about Jennifer Popen on February 25, 1976 and for some time thereafter. After Kim died the Society learned a lot about Jennifer Popen, much of which was information Mr. Carter could and should have obtained before February 25, 1976.

That he did not was because of his own uncertainty and hesitation and error. He acknowledged uncertainty and hesitation because of the absence of a determination by the Court of the identity of whomsoever had abused Kim. I ascribe error to him. He was in error in believing that the lack of such a judicial determination prevented him from establishing normal or usual case work practices in investigating the matter and preparing the Society's application to the Court. He was in error in believing that Mr. Higgins could "legally restrict" him from carrying out "routine or normal case work practices."

He compounded his original error by failing to seek advice as to the validity of his belief. He compounded his second error by accepting Mrs. Harvey's advice to abide by Mr. Higgins' injunction.

Mr. Carter's errors were of importance. The Society and the Court were deprived of the benefit that would have flowed from completion of normal case work. Mr. Carter in his testimony acknowledged

that in a case such as Kim's it was important that the Society and he have full and open access to the family home and full and open discussion with the parents of the child. The Society had neither. Kim was the ultimate victim of those errors.

Mrs. Harvey in her testimony, perhaps unwittingly in efforts to deflect criticism of the Society, acknowledged that performance of normal case work with the Popen family from September 1, 1975 to February 25, 1976 might have averted the tragedy. The period of time she mentioned coincides exactly with Mr. Carter's period of responsibility.

In my view Mr. Carter effectively abdicated all responsibility towards Kim between September 2, 1975 to February 29, 1976. All he did was co-operate with Mrs. Kirby, to arrange visits between Kim and her parents, and make some relatively cursory preparations for the hearing of the Society's application.

From Mr. Carter's references to the absence of judicial determination of the charge against Annals Popen and Jennifer Popen and to the effect of that absence upon his own conduct, I infer he felt that identification of Kim's abuser or abusers was essential to the success of the Society's application. If I am correct in drawing that inference, Mr. Carter was in error. I believe it would be of interest to know the identity of any assailant, but it should not be the sole determinant of the Society's application.

However, feeling that the identity of any assailant was so important, Mr. Carter nonetheless testified that his role was not to investigate Annals Popen and Jennifer Popen, but to establish a rapport with them. In my opinion that is another instance of error by Mr. Carter.

I am satisfied that he did have a duty to investigate. The testimony of well qualified witnesses makes that clear. It is equally clear that the existence of that investigative duty does create difficulty for any social worker who, after completion of any proceedings resulting from an investigation, must continue to work with persons who may have been the subjects of the investigation.

That does not excuse the social worker from performing the investigative role. Thus Mr. Carter is not to be excused from his failure to know the full scope of his responsibility.

Mr. Carter seems to have relied upon the Sarnia Police Force to conduct the necessary investigation. He seemed to feel that the result of the charge against Annals Popen and Jennifer Popen would have some bearing upon the result of the Society's application. It may be that the result of the police investigation would be of interest upon the hearing of the Society's application, but it would be only one of several factors in the result.

On the testimony of well qualified witnesses upon the Inquiry I am satisfied that the Society had a duty to investigate the allegation or belief that Kim had been abused. The Society appointed Mr. Carter to fulfill that duty.

Upon the testimony of those same witnesses I am satisfied that the Society could not delegate that duty although it might co-operate with the police in its performance. Mr. Carter elected to rely upon the police investigation without adequate independent effort by himself. Mr. Carter is not to be excused from his failure to conduct a complete investigation on behalf of the Society.

The transcript of the proceedings upon the hearing of the Society's application provides one means of measuring the extent and efficacy of Mr. Carter's investigation and his preparation of the Society's application. The deficiencies are rather startling, particularly since they probably contributed to Judge Nighswander's strong criticism of Annals Popen and almost sympathetic criticism of Jennifer Popen.

The testimony upon the Inquiry, reinforced by the results of the trials of Annals Popen and Jennifer Popen upon the charge of manslaughter, satisfy me that Judge Nighswander was misled as to the relative roles of Annals Popen and Jennifer Popen in the abuse of Kim. I am satisfied that that occurred because of Mr. Carter's inadequate investigation of all of the incidents of abuse or alleged

abuse and his inadequate preparation of the Society's application.

Mr. Carter did not testify upon the hearing of the Society's application; so the Court was not aware of the conflicting stories Jennifer Popen had given to him with reference to her life and experiences in Jamaica.

Upon the Inquiry Mr. Carter testified that he had felt that Jennifer Popen was affected by events which she said had occurred in her life in Jamaica. That was not mentioned upon the hearing of the Society's application. Upon the Society's application no testimony was given to explore whether or not there was any such effect and if so, what was it and what implication might it have for Kim. Such testimony might have been helpful and might have caused the Court to encourage the Society to make some further effort to investigate Jennifer Popen's earlier experiences.

While brief reports by Dr. Curtin, a psychiatrist, following interviews with Jennifer Popen and Annals Popen, were obtained in connection with the sentencing of Annals Popen in March, 1976, no effort was made to obtain any such information prior to the hearing and determination of the Society's application even though, in his testimony upon the Inquiry, Mr. Carter said psychiatric or psychological assessments might have been helpful. I share his view and can only wonder why he did not seek to obtain such assessments to assist himself and the Society in performance of statutory duties and in the making of decisions in respect of Kim.

Upon the Inquiry Mr. Carter testified that Jennifer Popen had told him of "visions" she had of her mother and that she came to his office on one occasion because, in such a vision, her mother had told her to go there. That was not mentioned upon the hearing of the Society's application. That too would have been useful in assisting the Court and the Society to assess Jennifer Popen's ability or capacity as a mother to Kim.

Mrs. Harvey, understandably since she was acting as a court worker for the Society, did not

testify; so the Court was not aware of her opinion of Jennifer Popen's credibility or involvement.

Kim's life and injuries were reduced to a reading in of the Crown brief, as read by the Assistant Crown Attorney upon Annals Popen's trial in the Court two days earlier. It was brief, inaccurate and incomplete.

It correctly stated Kim's date of birth as January 11, 1975.

It correctly described her admission to hospital on March 22, 1975 with a fractured left arm.

It incorrectly stated Kim was admitted to hospital on April 22, 1975 with black eyes.

It omitted reference to her admission to hospital on April 28, 1975 with upper respiratory infection and slight dehydration.

It incorrectly stated that Dr. Jumeau observed Kim had a black eye while in hospital after admission on April 28, 1975.

It referred to Dr. Jumeau's seeing Kim with bruises and a cut lip in his office on June 16, 1975. That portion continued to state that three weeks after Kim was in his office he saw her in hospital with a respiratory ailment and observed she had a black eye. It continued that on June 24, 1975 Dr. Jumeau reported his suspicions to the Sarnia Police. All of that is a jumble of errors and confusion.

It correctly stated her admission to hospital on August 31, 1975 with a fractured arm, bruises and other injuries.

It made no mention of the healing fractures of Kim's ribs discovered by X-ray after her admission to hospital on August 31, 1975.

It made no mention of Mrs. Hewitt's encounter with Jennifer Popen and Kim in a shopping mall, between April and August 31, 1975, when she noticed Kim had black eyes.

It made no mention of Mrs. Saul's observations and opinion on June 17, 1975.

Seven witnesses produced by the Society testified upon the hearing of the application. I have reviewed their testimony generally in Chapter XIV of the Report. It was brief and incomplete. Some of the testimony most supportive of the Society's application was contained in responses by those witnesses to questions put to them in cross-examination or by Judge Nighswander.

In examination in chief Police Constable Wyville described his observation of Kim's injuries on August 31, 1975. Only upon cross-examination was he asked about the different stories about or explanations for those injuries which Jennifer Popen gave to him.

The Director of Medical Records of the hospital testified as to Kim's admissions to hospital and one episode in which she was treated as an outpatient. That list of admissions and treatment did not agree with the statement read from the Crown brief by the Assistant Crown Attorney upon Annals Popen's trial on February 23, 1976 and read in as part of the evidence upon the Society's hearing.

The two portions of testimony were in agreement that Kim was admitted to hospital on March 22, 1975 with a fractured left arm.

The medical records disclosed that Kim, as an outpatient, was treated for an upper respiratory infection on April 12, 1975. That was not mentioned in the Crown brief.

The Crown brief contained a statement that Kim was admitted to hospital on April 22, 1975 with black eyes. The medical records do not mention such an admission or injury.

The medical records showed that Kim was admitted to hospital on April 28, 1975 for treatment of bronchiolitis. That admission is not mentioned in the Crown brief.

The Crown brief and the medical records both disclose Kim's admission to hospital on August 31, 1975 with a fractured arm and bruises.

The discrepancies between the two portions of testimony are apparent. There was no testimony to indicate that Mr. Carter had made any effort to resolve, reconcile or explain them. In my opinion such effort would reasonably be expected of anyone, with reasonable knowledge and skill as a social worker, preparing the Society's application for hearing.

Dr. Singh in examination in chief was asked only about the injuries Kim had suffered in March, 1975 and Jennifer Popen's explanations therefor. Only in cross-examination was he asked about the injuries she suffered in August, 1975 and Jennifer Popen's explanations therefor. He made no mention of black eyes or fractured ribs.

Mrs. Hewitt testified as to her observations of Kim and her parents and Jennifer Popen's explanations for Kim's injuries on her admission to hospital on March 22, April 22, April 28 and August 31, 1975 with particular emphasis upon the injuries suffered in August, 1975. She too made no mention of black eyes or fractured ribs although, upon the Inquiry, she testified as to seeing Kim with black eyes in the mall.

Mrs. Dick testified as to the events at the hospital on August 31, 1975.

Mrs. Kirby testified as to the Society's care of Kim while she was in a foster home and her visits with her parents.

The statement from the Crown brief mentioned Dr. Jumeau's observation of Kim, supposedly on June 16, 1975, and his report to the Sarnia Police Force, supposedly on June 24, 1975. It also mentioned that Dr. Jumeau had seen Kim with a black eye while she was in hospital with a respiratory infection. It is difficult to affix dates to items in this portion of the Crown brief and to reconcile them with hospital records and other testimony. Some dates mentioned are clearly wrong.

The portion of the Crown brief outlining what testimony Dr. Jumeau was expected to give if he were called was as follows:

"On June 16/75 the child was brought to his office with a cut lip and severe bruises over her face, neck and buttocks. Approximately 6 weeks prior to this, the child was hospitalized with a broken arm. Approximately 3 weeks prior to the child being brought to his office, she was checked by him at the hospital for a respiratory ailment and at that time he observed she had a black eye. On June 16, 1975, he can say he reported to the police he believed the child was battered."

I have found in this Inquiry that Dr. Jumeau saw Kim in his office on June 6, 1975 rather than on June 16, 1975. The testimony of Dr. Jumeau and police officers upon the Inquiry was that he reported the matter to the police on June 16, 1975, not on June 24.

The reference to Kim's being in hospital with a respiratory infection and a black eye "three weeks after the child was brought to his office," presumably on June 16, 1975 for that is the only office visit mentioned, is not supported by any testimony either upon the trial of Annals Popen or the hearing of the Society's application in February, 1976 or upon this Inquiry.

It is interesting to note that there was no mention in all of this that on June 17, 1975 the Society had been notified of Dr. Jumeau's telephone call to the police and that Mrs. Saul and Mrs. Hoad, on behalf of the Society, had visited Kim and her parents, but, inexplicably, the Society had not carried out procedures which had then been deemed necessary or desirable.

There was no testimony upon the Inquiry to indicate that Mr. Carter made any effort to resolve or reconcile any of the inconsistencies or contradictions in all of this or to supplement any of the inadequacies or deficiencies.

In Chapter XIV I have set forth a comparison of the testimony upon the hearing of the

Society's application and the corresponding testimony upon this Inquiry. Really they defy comparison, but I believe my comments demonstrate how much more information could have been given to Judge Nighswander if the Society's application had been properly prepared and presented. Mr. Carter is responsible for the poor and incomplete preparation.

In Chapter XIV I have commented adversely upon Mrs. Harvey's presentation of the Society's application on February 25, 1976. Mr. Carter's poor preparation of the application contributed to that part of Mrs. Harvey's downfall. He is not excused from that responsibility because Mrs. Harvey was willing to accept and present an inadequately prepared application.

Mr. Carter himself summed it all up rather well when he said that on February 19, 1976, when confronted by Mrs. Kirby, Police Constable Wyville, Police Constable Charlton and Mr. Carter, Mrs. Harvey was not familiar with the evidence which he had gathered for presentation upon the Society's application on February 25, 1976 "unless she had directly interviewed each of the witnesses that [he] had subpoenaed." In my opinion it was incumbent upon Mr. Carter, in some way, to have apprised Mrs. Harvey of that evidence.

I am satisfied on the testimony of both Mrs. Harvey and Mr. Carter that he did not adequately inform Mrs. Harvey of the testimony the various witnesses might give. There was no testimony that the two of them had any sort of conference before the hearing to determine what evidence was available and what witnesses might be called.

The absence of any such conference was clearly demonstrated by Mr. Carter's testimony that, until Mrs. Harvey advised the Court otherwise at the opening of the hearing on February 25, 1976, he had understood the Society was applying to have custody of Kim for six months. Upon the Inquiry he stated his persistent belief that Society wardship of Kim for a period of six months was an appropriate goal for the application.

It is further demonstrated by Mr. Carter's testimony that he was not called upon to testify upon

the hearing of the Society's application. I inferred from that testimony that he felt he had information which might have been helpful to the Court, but which he was prevented from giving.

Mr. Carter with Mrs. Harvey, must bear responsibility for the absence of any such conference and his inadequate brief for her use. As an experienced social worker he should have known the need for such a conference and complete briefing of the Society's court worker. That need would be ever so much more important in a case as serious as Kim's.

In summary of this area, I find Mr. Carter did not fulfill his duties to Kim between September 2, 1975 and February 25, 1976.

He imposed some restrictions upon his own powers and obligations of investigation and normal case work. He was in error to do so.

With Mrs. Harvey's expressed concurrence, he accepted Mr. Higgins' later additional restriction in those areas. He was in error to do so.

With Mrs. Harvey's tacit concurrence he failed to keep her fully informed of what little he did do in Kim's case. He placed nothing in the permanent recording of Kim's case until after he was relieved of the case on February 25, 1976. In my opinion, on the testimony of the qualified and experienced persons who testified upon the Inquiry, that was a failure for which Mr. Carter is responsible. There was not, until after February 25, 1976, any record, in permanent form, of his actions, observations and opinions.

In the same vein, Mr. Carter was in default of the requirements of section 14 of Regulation 86 made under The Child Welfare Act. He failed to record, within twenty-one days of August 31, 1975, information as to his investigation of the report that Kim had been abused and his determination as to whether Kim was or was not a child in need of protection.

Clearly, in the opinion of the Society, confirmed by the order of the Court made on February 25, 1976, Kim was a child in need of protection.

That same section of Regulation 86 required the Society, within that same period of twenty-one days, to record a tentative plan for Kim's welfare and the steps taken to implement it. Mr. Carter made no such recording.

Mr. Carter's own testimony acknowledged he had not conducted an appropriate investigation. He relied upon the police.

But, in cross-examination, he was asked,

"...did you have my discussion with the officers about they having interrogated or interviewed the Popens to obtain admissions or confessions?"

and he replied,

"I have no information concerning their interrogation or communication."

Thus not only did he fail to conduct the necessary investigation, but he failed to obtain information from the police who, he felt, had the responsibility to investigate.

His own testimony acknowledged that he had not formulated any plan or goals for Kim's welfare. Thus he could have taken no steps to implement any such plan.

Upon the Inquiry he was asked the following question and made the following answer:

"Q. So between the 2nd of September, 1975 and the 25th of February, 1976, did you start on your future planning for Kim Anne Popen? Did you start going into that area?

A. No."

Section 15 of Regulation 86 requires a society, within sixty days of the admission of a child to its care, to prepare and record a plan for the care, treatment and progress of the child while in its care. That plan is to be reviewed every three months.

Mr. Carter was in default of that section. He prepared no such plan and, *a fortiori*, he reviewed no such plan.

Thus his failures arose either out of ignorance of the requirements of the Regulations or out of neglect either to investigate and prepare plans or to record as required by the Regulation. Either way Mr. Carter bears the responsibility.

Mr. Carter acknowledged in his testimony that speedy determination of issues such as those involved in the Society's application in respect of Kim is desirable. He had some responsibility to ensure that a speedy determination was obtained.

In my opinion Mr. Carter is not to be criticized for the adjournment from September 8, 1975 to October 29, 1975. An adjournment was needed by the Society and by Mr. Higgins on behalf of Jennifer Popen and Annals Popen.

In my opinion it would be unfair to place on Mr. Carter full responsibility for the adjournment from October 29, 1975 to January 19, 1976. But his failure to maintain close liaison with the Sarnia Police Force and the office of the Crown Attorney with reference to the prosecution of the charge under section 40 of The Child Welfare Act did contribute to the problem. He testified that he was not aware that anyone from the Society had spoken with the Crown Attorney about the matter. That liaison might have prevented the two proceedings being begun in different courts.

However Mr. Carter, responsible for the preparation of the Society's application, shares, in large measure with Mrs. Harvey, responsibility for the adjournment from January 19, 1976 to February 25, 1976. He failed to have a necessary witness available for the hearing. That was his responsibility.

Had the matter proceeded at any time before February, 1976 another of Mr. Carter's inadequacies might not have come to light. He testified that, when he learned of the agreement between the Crown Attorney and Mr. Higgins as to the disposition of the charge against Annals Popen and Jennifer Popen under

The Child Welfare Act, he felt the Society's application would have little chance of success.

He testified that he and others in the Society suspected that Jennifer Popen had caused Kim's injuries and that the withdrawal of the charge against her somehow inhibited the Society's presentation of its case and created the possibility that the Court might find that Kim was not a child in need of protection.

He testified that he relied upon a finding of guilt against both of Jennifer Popen and Annals Popen to "substantiate" the Society's submission. He said that when he learned of the agreement his "reaction was 'well I really don't have much to go on myself.'"

I regard that as an acknowledgement by Mr. Carter that he had not adequately performed his duties. So many of the qualified and experienced persons who testified upon the Inquiry spoke of so many indications of danger to Kim that were revealed by the information contained in Mr. Lovatt's reports to the Central Registry and in the recordings of the Society, including those belatedly prepared by Mr. Carter. Their opinions were supplemented by information available in 1975 and 1976, but not gathered and assessed until December, 1977 and the months thereafter.

In my opinion Mr. Carter did not correctly appreciate the different natures of the two proceedings. I do not accept that a finding of guilt against either or both of Annals Popen and Jennifer Popen was essential to enable the Society to succeed upon its application.

In any event, on his own testimony, Mr. Carter was aware of the agreement between the Crown Attorney and Mr. Higgins on February 19, 1976 about one week before the scheduled hearing of the Society's application. It was not then too late for him at least to begin to do some of the investigation and case work he should have been doing earlier. But he continued his programme or policy of non-involvement and nonactivity and unquestioned adherence to Mr. Higgins' restrictions.

He sought no advice from anyone. He complained to no one.

His predicament was of his own making.

He relied upon the police to investigate; so he did virtually none himself.

He "respected" Mr. Higgins' advice to Jennifer Popen and Annals Popen in September, 1975 that they should not talk with Mr. Carter.

He believed that the laying of the charge under section 40 of The Child Welfare Act prevented him from conducting normal case work; so he refrained from carrying out usual and appropriate procedures.

He complied with Mr. Higgins' injunction against contact with Jennifer Popen and Annals Popen in January and February, 1976 even though he "considered it hindered [his] normal case work practice" and "felt [he] did not have routine access to [his] client based on her legal representation and restrictions placed by Mr. Higgins".

The absurdity of Mr. Carter's position, in relation to his failure to investigate, to carry out normal case work practices and to interview Jennifer Popen and Annals Popen, is best illustrated by two questions put to him in cross-examination and his responses thereto.

In approaching the questions counsel had obtained Mr. Carter's agreement that, as soon as he learned that Annals Popen and Jennifer Popen were represented by Mr. Higgins, which was on September 8, 1975, he had decided to adopt his "usual courtesy and not interfere with the solicitor and client relationship." That was reinforced later in September, 1975 when Jennifer Popen and Annals Popen informed him of Mr. Higgins' advice that they not speak with Mr. Carter. He said even a letter from Mr. Higgins' office in November, 1975, inquiring about more liberal visits of Kim with her parents" conveyed to him a restriction upon his contact with Annals Popen and Jennifer Popen.

The two questions and Mr. Carter's responses to them were:

"Q. ... And you felt that inherent in - the mere fact that the letter was being written to you, that they were going to the trouble of writing a letter, inherent in that was the instruction or injunction to you not to interview the client about the case?

A. Yes.

Q. Isn't it fair to characterize your position as this, that as soon as you learned that a lawyer who is known to be rather vigorous in their representation of his clients was involved in the case, you automatically adopted this courteous position that you've described of not creating a further disturbance with the law firm? Isn't that about it?

A. Correct."

Thus Mr. Carter was in a ludicrous position of his own making and he sought no help to escape from it.

He was the worker assigned by the Society to provide to Kim some of the services which the Society was obliged to provide to her under section 6 of The Child Welfare Act. Mrs. Kirby and others associated with the Children's Services Department of the Society were providing other services to Kim.

One service the Society should have provided to Kim was, in paraphrase of the legislation, investigation of the allegation or evidence that she might be in need of protection.

Another was to protect Kim. Until February 25, 1976 Kim was physically in a place of safety, but her continued safety depended upon the outcome of the hearing of the Society's application on that day.

Another was to provide guidance, counseling and other services to Kim's family to protect her or to prevent circumstances which would require her protection.

Mr. Carter was the worker who should have provided all of those services to Kim.

He did little, if anything, to meet his commitments.

He did not investigate in any real sense.

He did not prepare sufficiently and well for the hearing of the Society's application. He had some doubts that it would succeed, but even those doubts did not spur him to further action.

He did not provide any guidance, counseling and other services to Kim's family to protect her or to prevent her being in danger in her own home. He had virtually no contact with Jennifer Popen and Annals Popen from late September, 1975 until mid-February, 1976.

Here was a man who put courtesy to a solicitor and respect for the relationship of solicitor and client ahead of his duties to Kim.

In all of this Mr. Carter failed Kim.

One should be courteous. One should have respect for professional relationships. But Mr. Carter could have been courteous to and respectful of Mr. Higgins while serving Kim's interests. He was courteous and respectful only at the loss of protection to Kim.

Mr. Carter did not meet Dr. Turner's expectation that a qualified social worker would have challenged Mr. Higgins' attempt to restrict the social worker's performance of duty.

Mr. Carter testified that he had considered the adviseability of obtaining a psychiatric or psychological assessment of Jennifer Popen, but he had not recommended it. He said:

"A. It would have been helpful, the exception being I felt that with morality and her doctor involved this would have been a process they would have attended to.

Q. So, at no point you recommended such assessment?

A. I did not recommend to anyone specifically."

In that response he was saying that he was relying upon the police and Jennifer Popen's doctor, unnamed, but presumably Dr. Jumeau, to obtain any such assessment. But his testimony was that he had not recommended it to them or advised them of his expectation that they would attend to it.

The adverb "specifically" in that response appears to be unnecessary and meaningless.

That was a further illustration of lack of preparation of the Society's application. He felt the police or doctor would do something; he did not suggest it to them; he did not ask if it had been done. It was not done.

It would seem that while he had arranged for witnesses to be physically present and to testify if called upon he had not really learned what their testimony might be. Without that information he could not have known whether the Society's application was ready for hearing. He could not have known if additional persons were required to establish facts upon which he and the Society relied.

An enlargement of that failure by Mr. Carter was that, although he recognized that it was important to obtain information upon the background of Jennifer Popen and Annals Popen, he did not obtain such information. He did not try to do so apart from some discussions with them early in September, 1975 before they informed him of Mr. Higgins' advice that they not speak with Mr. Carter.

That was the sort of information which Dr. Turner said should have been obtained by the Society in June, 1975 and in September, 1975. He spoke of it as being psycho-social histories.

That was part of the information that should have been obtained to support the Society's position and to enable it to prepare and execute its plans to protect Kim and to assist her parents. It

was part of the routine case work that Mr. Carter should have done. But he did not do it.

Mr. Carter did testify that he had interviewed the various witnesses who testified upon the hearing. There was no testimony to indicate the subject matter of any such interviews and nothing from the Society's files was produced to indicate that anything was placed in those files to record, in any way, for the hearing or otherwise, the fact of such interviews and the nature thereof. I infer from Mrs. Harvey's limited examination of those witnesses that she had little, if any, information as to what testimony they might give and what Mr. Carter expected then to give.

Thus, in my opinion, in all of this, Mr. Carter failed Kim and that failure contributed to the ultimate tragedy.

Mr. Carter made no formal recording of incidents in Kim's case until after he was removed by Mrs. Harvey. Then he purported to record all that had happened from August 31, 1975 to February 25, 1976.

I am satisfied that it would have been more appropriate and useful to Kim and to anyone involved in her case if he had made entries in the recordings at appropriate intervals during those six months.

I am aware that there was testimony upon the Inquiry to the effect that some workers or societies have been criticized because their records were too detailed and voluminous and, as a result, there had been a movement to record events in blocks of time rather than event by event.

I am mindful of Dr. Turner's criticism of the recordings in the Society. He spoke of them as being merely reportorial, lacking in assessment or evaluative components and not meeting the standards one would reasonably expect of professional social workers.

Mr. Carter's recording was not excepted by Dr. Turner, although Dr. Turner did feel there were some areas of Mr. Carter's recording which went part way toward a desirable or acceptable standard.

Apart from the deficient and belated recording made by Mr. Carter, he continued his failure to perform adequately towards Kim even after he was removed from her case. His duty to Kim did not end on February 25, 1976 when Mrs. Harvey informed him that thenceforth Mrs. Lo would handle the case.

Mr. Carter knew that. He prepared the recording for the file so that it would be available to Mrs. Lo, Mrs. Harvey and anyone else who might be involved.

But Mr. Carter also knew the usual and acceptable practice to be followed when a case is transferred from one worker to another. He knew that there should have been a conference about that transfer of Kim's case from him to Mrs. Lo. He knew that at least Mrs. Harvey, as Supervisor, Mrs. Lo as the incoming worker, and he, as the retiring worker, should have met to discuss the case and its ramifications. It might have been appropriate for others of the Society's personnel to attend that conference.

That practice was not followed and Mr. Carter took no step to try to arrange it. Such a conference might have been very helpful to Mrs. Lo. I appreciate that Mrs. Harvey, as Supervisor, should have convened such a conference and Mrs. Lo, as the incoming worker who would directly benefit from it, should have urged Mrs. Harvey to convene such a conference or should have sought out Mr. Carter for a private briefing.

Mr. Carter is not to be excused from criticism for this last item of failure just because neither Mrs. Harvey nor Mrs. Lo did what might reasonably have been expected of them. Mr. Carter, an experienced worker, knew or should have known the value of such a conference, particularly to a worker as inexperienced and unqualified as Mrs. Lo. His failure to insist upon such a conference, or at least a meeting with Mrs. Lo, was the last of his several failures to Kim.

Mr. Carter's defence, as it were, to this last criticism was that he had prepared a complete recording for Kim's file which Mrs. Lo could have read if she were so minded.

The transparency of that defence is apparent. Mr. Carter knew that there were often lengthy periods of time before workers' notes or dictations were transcribed. He knew that he had put nothing in the file. He knew Mrs. Lo would be entering upon the case immediately. He knew she had been employed by the Society for less than three months. He knew it was a difficult case of a sort which required a worker with previous experience, a knowledge of the community and its resources and with a good liaison with community services such as the police and medical services.

Mrs. Lo met none of the requirements he felt were appropriate for a worker assigned to Kim's case. He made no inquiries to learn Mrs. Lo's qualifications. If he did not know, it is my opinion that he should have known that Mrs. Lo lacked the necessary qualifications even as minimal as he himself said were required.

A further weakness of that defence is found in Mr. Carter's testimony in which he identified errors in or omissions from the transcript purporting to record his notes or dictation. I have already expressed my opinion that the records of the Society are not reliable. Mr. Carter was expressing the same view.

I cannot imagine that this was the first instance in which he found incorrect transcription of his notes. The testimony upon the Inquiry satisfied me that the recordings of the Society were not reliable. There were errors, omissions, inconsistencies, contradictions and confusion.

It is inappropriate for Mr. Carter to suggest that it would be sufficient for Mrs. Lo to read the recording in the file. He knew or should have known it might not correctly reflect what he had written or dictated. Even if the transcript were fully accurate it could not replace a conference in which he could enlarge upon or explain his written record and answer any question Mrs. Lo or Mrs. Harvey might have had. But he had not prepared any recording until after Mrs. Lo had begun to visit the Popen home.

The last employee of the Society to have direct involvement in Kim's case was Mrs. Shirley Lo.

An examination of her *curriculum vitae* in Schedule 1-E to the Report reveals her almost absolute lack of qualification or experience to justify her selection by Mrs. Harvey as the worker to manage Kim's case from February 25, 1976.

One cannot help but recognize that Mrs. Lo was "in over head," as was said upon the Inquiry. That recognition leads to a sort of sympathy for her or a feeling that she too was a victim of Kim's case. Almost everyone who was involved in Kim's case was a victim of it, but I think Mrs. Lo was more so than some others. She was less able to defend herself than others were able to defend themselves.

Nonetheless Mrs. Lo must accept responsibility for any deficiencies or inadequacies in the services she, on behalf of the Society, rendered to or for Kim.

She sought and accepted employment by the Society. She was somewhat surprised that she had been offered employment.

She accepted assignment of responsibility for Kim's case. She may not have fully realized its full ramification and complexity, but she knew its general nature and that it was regarded as being a serious case.

Mrs. Lo was employed by the Society in December, 1975 and, until Kim's case was transferred to her, she had been given personal and direct responsibility for very few cases. I sensed that for the most part she was much like an apprentice. She was able to overhear and observe other workers performing their various tasks.

She said Mrs. Kirby was the first to tell her that Mrs. Harvey would be transferring Kim's case to her. That was in mid-February, 1976, before the hearing of the Society's application.

Later, Mrs. Harvey informed her of the transfer and gave her some information about the case

and its difficulties. Mrs. Lo had had no experience with any case of child abuse.

She understood that there was difficulty between Mr. Carter and Kim's parents and that it was felt that the fact that she was a young, recent immigrant to Canada with a young child would be favourable to a good relationship with Jennifer Popen.

I am prepared to accept that Mrs. Lo did not realize the full gravity of her assignment in February, 1976 and that, in view of her lack of training and experience in social work, it might have been unreasonable then to have expected her to have been able to make that realization.

However, in an extension of Dr. Turner's opinion that social workers have an obligation to keep their knowledge and skills current, I do believe that, in the succeeding months, Mrs. Lo should have been able to realize that Kim's case was too serious and too complex for her to deal with, even with Mrs. Harvey's guidance.

I am satisfied, on the testimony, that cases of child abuse must be managed or treated by persons with high levels of training supplemented by practical experience. I am similarly satisfied that recognition of symptoms of child abuse is difficult because of their diversity, their many subtleties and their many complexities. I am similarly satisfied that detection, recognition, management and treatment of cases of child abuse often require the inter-disciplinary co-operation of a variety of professions and skills.

In my opinion even the most perfunctory reading of textbooks and other material upon the subject of child abuse should have caused Mrs. Lo to recognize that she was "in over her head." She should then have asked to be relieved of the case or to work on it in some other capacity, perhaps as an assistant to a more senior, experienced and qualified worker.

I would think too that Mrs. Lo, from discussions with other members of the staff of the Society, would have learned that Kim's case was an

unusual case for the Society and therefore might be expected to present unusual and difficult problems.

While it is my opinion that Mrs. Harvey, as Supervisor, bears the greater burden of responsibility for Mrs. Lo's assignment to Kim's case, Mrs. Lo must bear some part of the responsibility for accepting and retaining the assignment.

I am satisfied that Mrs. Lo is an intelligent person with good intentions and with a desire to perform her duties well. But in 1976 she did not have the training, knowledge, skills and experience necessary to enable her to serve Kim properly. Her recent arrival in Sarnia, compounded by her more recent employment by the Society, had not enabled her to establish the network of personal contacts with persons, authorities and organizations in the City of Sarnia and the County of Lambton which are necessary complements of the other qualifications for a social worker.

In my opinion Mrs. Lo's first mistake, after accepting the assignment, was to visit Jennifer Popen before speaking with Mr. Carter. She had read the brief recording which was then in the file, but Mr. Carter's lengthy recording for the period from September 2, 1975 to February 25, 1976 had not been transcribed. So all she could have read were Mrs. Saul's recording with reference to June 17, 1975 and Mrs. Dick's recordings with reference to June 17 and August 31, 1975. They would not have given her much information. I assume Mrs. Harvey would have supplemented that somewhat, but I am not satisfied that, even then, Mrs. Harvey was fully aware of what Mr. Carter knew or thought about the case.

While Mrs. Harvey and Mr. Carter share the responsibility with her, Mrs. Lo has some responsibility for the absence of any conference surrounding the transfer of the case to her. From the testimony upon the Inquiry I am satisfied that the need for such a conference was well-known and elementary even in the Society. Even if Mrs. Harvey and Mr. Carter did not take the initiative, Mrs. Lo should have gone to Mr. Carter to gain the benefit of his knowledge of and experience with Kim and her family and his opinions about what had happened and what might be expected to happen. She might even have asked him to

accompany her and to introduce her to Jennifer Popen and Annals Popen.

By entering upon the case without prior information and assistance from Mr. Carter she did a disservice to herself and to Kim. Both she and Kim suffered as a result.

On the testimony upon the Inquiry I am satisfied that Mrs. Lo visited Kim's home on an appropriate number of occasions. By that I mean that the number and frequency of her visits was generally sufficient if she had been adequately qualified to manage the case.

In the same way I am satisfied that, given Mrs. Lo's lack of qualification, no number of visits by her would have been sufficient to constitute fulfillment of her duty and that of the Society to protect Kim. She was merely the "friendly visitor" mentioned in testimony.

Mrs. Lo's recordings in the files of the Society support that view. It was to her recording that Dr. Turner directed many of his comments expressing dissatisfaction with the recordings in Kim's file. I have set forth Dr. Turner's comments in some detail in Chapter XXX of the Report.

In summary, as I understood Dr. Turner, his opinion was that Mrs. Lo's recordings were good reporting in the sense of saying what she observed, but they lacked everything else that should be contained in a recording by a professional social worker.

They did not show her perception of the case. They did not express any opinion she may have had. They did not contain any evaluation or assessment of what she observed. They did not indicate that she recognized that anything she observed was of any particular significance.

Her recordings were not satisfactory and did not meet reasonable standards.

Dr. Turner said that Mrs. Lo's recordings did not set forth any statement of the Society's goals in Kim's case and the means it intended to employ to achieve those goals.

One example of that is that Mrs. Lo, in her testimony upon the Inquiry, said that she had understood from Mrs. Harvey that the Society "had six months' Society wardship of [Kim] and it had been our case goal to return the child to her home."

I have read Mr. Carter's recording in Kim's file. It does not set forth any goal for attainment by the Society. Indeed it states:

"With regard to worker/client case relationships, case goals etc. this was legally restricted by the Popen's (sic) lawyer..."

However, as I have written in Chapter XIV of the Report, I am satisfied that Mrs. Harvey had decided, before February 25, 1976, that Kim would be returned to her home.

I then turned to Mrs. Lo's recordings. There is no mention of any goal in the recording under date of February 27, 1976 even though two paragraphs are entitled "Assessment" and "Plan." The "plan" was simply for Mrs. Lo to visit the home often and to try to offer encouragement, understanding and help. That is really skeletal.

Under date of March 4, 1976, Mrs. Lo wrote "Once Kim comes home to stay the situation will be different." That was not set out as a goal to be attained. I am satisfied on Mrs. Lo's testimony that when she wrote that item she felt it was a foregone conclusion that Kim would be returned.

That, as well as her lack of knowledge of The Child Welfare Act and of court proceedings thereunder, is illustrated in the following series of questions put to her and her responses thereto:

"Q. At the time you took over the file in middle or late February 1976 what did you understand the situation was with respect to Kim and what her future was to be?

A. What do you mean future?

Q. Where she was going to be kept, was she going to be kept as a ward of the

Children's Aid Society or was she going to be returned to her parents or was there any understanding or decision made at that time?

A. My impression at that time was the child would return home eventually.

Q. Who gave you that impression?

A. We had six months' Society wardship at that time and my understanding was that when the wardship expires if there are any special reasons the child would return home.

Q. Unless there were special reasons, is that what you say?

A. Yes.

Q. Well, just because you had a six months' wardship you know now doesn't mean that you couldn't have applied for permanent wardship at any time or applied for an extension of the temporary wardship.

A. I know now, yes.

Q. You mean you didn't understand that at that time?

A. I wasn't completely aware of that at that time.

Q. So you understood from the beginning that the child was to be returned to its parents?

A. True."

and, a bit later:

"Q. When you took over the file it was just presumed as far as you were concerned that the child was being returned eventually to the parents?

A. Yes.

Q. And you didn't even know that any other course could have been taken?

A. I knew that the child could be made a Crown ward, but my feeling at that time was if we only got six months Society wardship at that time there was little chance that we could get Crown wardship later on."

and, later, in cross-examination:

"Q. You knew that the initial Society wardship was for six months, and I believe that it was your testimony that "I was not completely aware at that time that wardship might be extended". Is that a fair -

A. I think rather I was aware that the Society wardship could be extended but not in this case, I think I believed that it would be very difficult."

Thus I am satisfied that that mention of Kim's return was not the statement of a goal set by her or the Society, but it really was the statement of something, virtually inevitable, which would probably have to be accepted by the Society.

It was not until her recording under date of March 18, 1976 that Mrs. Lo wrote of making Kim's return home before the birth of the new baby "a goal for all of us [Annals Popen, Jennifer Popen and she] to work at for the time being." That was followed somewhat later by the comment "we know Kim would come back shortly." I infer that, even though Mrs. Lo, in conversation with Annals Popen and Jennifer Popen, spoke of Kim's return as "a goal for all of us" she still regarded it as an inevitable consequence of the decision of the Court on February 25, 1976. Mrs. Lo had not been present in the Court to hear that decision nor had she seen a transcript of the Court proceedings including Judge Nighswander's comments when pronouncing judgement.

The next item in Mrs. Lo's recording to contain mention of the possibility of Kim's return is under date May 6, 1976. It was written in the

context of concern over the disruptive effect which Kim's visits with her parents had upon her. It was merely a statement of the alternative courses open to the Society considered by Mrs. Harvey, Mrs. Lois Eleanor Archer, Adoption Supervisor, Mrs. Kirby and Mrs. Lo and concluded as follows:

"...it was decided that Kim should either be returned home as soon as possible, or home visits be stopped and Kim be returned after her parents are adjusted to the new baby."

There was no testimony to satisfy me that Mrs. Lo was expressing any opinion that Kim's return was an appropriate goal to be attained as distinct from an inevitable consequence to be endured.

The concluding sentence of that item in her recording is unintelligible to me. It is as follows:

"Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course, it is determined when the home visit be made before we decided which alternative between the two we are going to choose."

I am satisfied that Mrs. Lo is expressing an opinion that the "home situation," whatever that may be, had improved. She sets out in earlier items a number of optimistic comments to that effect by Jennifer Popen and Annals Popen, but I am unable to find any real basis for the conclusion that the "home situation" had improved.

I am satisfied that Mrs. Lo is expressing her opinion that Annals Popen and Jennifer Popen were attempting to benefit from the Parent Effectiveness Training Course. Unfortunately for the validity of that opinion, the Course had begun only on April 26, 1976, ten days before Mrs. Lo made that recording, and Mrs. Lo had not determined whether Annals Popen and Jennifer Popen were benefitting from it.

There are two factors in my skepticism. The Course had just begun and mere attendance, even

accompanied by effort, is not synonymous with benefit to Annals Popen and Jennifer Popen.

I need not belabour the point. Simply put, I am not satisfied that Mrs. Lo decided that Kim's return home was appropriate as opposed to having accepted that it was inevitable. To Mrs. Lo, Kim's return was not a goal to be achieved. To her, it was something which would almost inevitably follow in August, 1976 and the Society should prepare for it.

I am satisfied that Mrs. Lo was one of the staff of the Society who were found by the Farina Committee and Mr. Zwerver to have an inadequate knowledge of The Child Welfare Act and of child welfare practices and procedures.

I am satisfied that Mrs. Lo made many observations and recorded much of what she observed. I am not satisfied that she appreciated the significance of all that she observed and recorded. I am not satisfied that she recorded all that she observed and which, known or unknown to her, was of significance.

I accept the analogy given by Dr. Turner when he was asked if Mrs. Lo's lack of expertise and experience should not be factors to be considered in any assessment of her performance of her duties. Dr. Turner was not willing to say that she had performed well within the limits of her expertise and experience. The analogy he used was to assess the performance of one driving an automobile for the first time. He said an observer might say that that person drove well for a beginner, but that would not be equivalent to the observer saying that that person drove well or even adequately.

I share the sentiment inherent in that analogy. Mrs. Lo may have done well for one entirely unqualified to perform the task, but she did not perform her duties well or even adequately.

Kim was entitled to more from the Society and from Mrs. Lo.

I accept Dr. Turner's testimony that Mrs. Lo's recordings are not completely devoid of items which, if correctly interpreted and assessed, would

have been useful in the process of making decisions in Kim's case.

I accept his further testimony that Mrs. Lo's recordings contain items which do indicate that, if a qualified and experienced social worker had been present at various events, such as conversations between Mrs. Lo and Jennifer Popen on February 27, 1976, that social worker might have pursued or exploited the discussion to prepare the psycho-social history which he felt was necessary to the proper management of Kim's case. The Society and Mrs. Lo did not obtain an adequate psycho-social history during Kim's lifetime.

In that latter area I am not prepared to accept that whatever Jennifer Popen told such a social worker, as he or she pursued the matter, would have been reliable. Dr. Curtin found her unreliable. Mr. Carter found her to be a "proverbial liar." I found her to be an unreliable witness even under oath.

I share Dr. Turner's view that Mrs. Lo seemed to accept naively whatever Jennifer Popen told her. He spoke of an "unevenness" in her recording mentioning Jennifer Popen's pleasant behaviour on occasion when considered in the light of the "hard indication" of repeated incidents of abuse to Kim.

In all of this criticism I recognize that Mrs. Lo was in a very real sense an extension of Mrs. Harvey who put her in a position for which she had utterly inadequate qualifications.

For that reason I do not propose to deal here, as part of my review of Mrs. Lo's performance, with Dr. Turner's opinion as to the contradictions inherent in Mrs. Lo's recording under date of May 6, 1976. He was surprised by the decision to discontinue Kim's visits preparatory to her return home while, at the same time, retaining intent to return her home.

The reference to Kim's regression after her visits home was one item which Dr. Turner felt was of significance and something to which a qualified social worker should have been alert. In his view it

should have been carefully examined and analyzed. It was not.

Earlier I have written that, in terms of numbers of visits to Kim's home, Mrs. Lo's visits were adequate. But the substance of those visits was not adequate. Mrs. Lo was simply the "friendly visitor" mentioned in the testimony of various well qualified witnesses. She was well-meaning, but she was ineffective because she did not know what to do or how to do it or how to record, analyze and interpret it and whatever resulted from it after it was done.

An example of that lack of knowledge was illustrated by her failure to arrange to have Kim examined by a doctor after her return home on May 27, 1976. The illustration is enlarged by her failure to request, or demand if need be, that Kim be undressed so that Mrs. Lo might examine her for any marks or indications of injury that might be apparent upon such external examination.

Mrs. Lo knew that Kim had suffered injuries on at least two earlier occasions. She should have been aware of the allegations of at least two other occasions of alleged injury and the incident of the fractured ribs.

I accept Dr. Turner's testimony that the literature upon the subject of child abuse showed that such abuse was a recurring thing. Thus Mrs. Lo should have known that Kim, abused on prior occasions, might be abused again. Therefore the Society and Mrs. Lo should have arranged for Kim to be examined by a medical doctor at regular and short intervals of time after her return.

On the testimony upon the Inquiry I am satisfied that a lay person, such as Mrs. Lo, could not reasonably be expected to observe all of the injuries which were revealed upon the post-mortem examination of Kim's body. Nor could she be expected to recognize or assess the severity or likely cause of any injury she did observe.

I also accept Dr. Turner's testimony that in 1976 it was known that certain injuries, in which I assume he included the injuries to Kim's pelvic,

vaginal and rectal areas, were not uncommon and that social workers had to be alert to them.

Thus I am satisfied that Mrs. Lo should have arranged for Kim to be examined by a medical doctor. In my opinion such examinations would serve two purposes. They would reveal any injury Kim may have suffered. More importantly to Kim, the knowledge that Mrs. Lo had arranged for Kim to be examined, say, bi-weekly, must surely have deterred anyone from abusing her.

In similar vein I am satisfied that the two purposes of medical examinations, revelation of injury done and deterrence of anyone from doing further injury, could only have been enhanced by Mrs. Lo establishing a practice of undressing Kim on some or most or all of her visits to the Popen home after Kim's return there on May 27, 1976.

All in all, I am satisfied that Mrs. Lo did not adequately perform the duties assigned to her. She failed Kim.

Mrs. Lo's failure arose from her own inadequate qualifications to perform those duties and from Mrs. Harvey's assignment of them to Mrs. Lo and then Mrs. Harvey's failure to provide adequate supervision, guidance, advice and assistance to Mrs. Lo.

Mrs. Lois Eleanor Archer is the only other social worker employed by the Society who had any involvement with Kim. Mrs. Archer was the Adoption Supervisor of the Society and, I gathered, that involved supervision of the Children's Services Department of the Society and Mrs. Kirby.

Thus Mrs. Archer's role was modest and indirect.

I am satisfied that Mrs. Archer was well-qualified for her position and had an extensive background in the fields of education and social work.

Mrs. Archer became aware of Kim and the Society's involvement with her while Kim was in hospital after her admission on August 31, 1975. She was aware that Kim would require care by the Society

when released from hospital. Mrs. Archer was responsible for the assignment of Kim's case to Mrs. Kirby, but that assignment was, in effect, a pre-determined selection. Kim, by reason of her age, was in the grouping of children in the care of the society who normally went into Mrs. Kirby's caseload.

Mrs. Archer acknowledged that in her long experience she had not been directly responsible for supervision of any case of abuse before Kim came into the care of the Society. She testified that no case for which she was responsible had been specifically designated as being a case of abuse. Mrs. Archer felt that in prior years fewer cases were so designated, but she was not prepared to say that that meant there had been fewer cases of abuse.

Mrs. Archer testified that Mrs. Kirby received no particular instructions as to the services she should provide for Kim. Mrs. Archer seemed to feel that, since Mrs. Kirby would ordinarily ensure that any child whose case she was managing received good care in a foster home and also received medical examinations and care by a doctor or paediatrician who was fully aware of the child's case and its history, it was not necessary for Mrs. Kirby to receive any special instruction with reference to Kim.

At first blush, on the testimony upon the Inquiry, I had felt that Mrs. Archer was perhaps in error in that view and that Mrs. Kirby should have received specific instructions about Kim. Since Kim had been a victim of physical abuse she might also have suffered other forms of abuse or neglect. I felt therefore that Mrs. Kirby should have been instructed to obtain some special care for or assessments of Kim. On reflection I am inclined to agree with Mrs. Archer. The continued involvement of Dr. Singh, a qualified paediatrician, who had been involved with Kim's care in March, 1975 and again in September, 1975, probably was sufficient to ensure that Kim received the best of medical care, including appropriate assessment of her development physically, psychologically and emotionally.

I am satisfied that Mrs. Archer interested herself appropriately in Kim's case. She made it a point to observe Kim from time to time when Kim was

in the Society's office. That was to enable Mrs. Archer to provide more effective and helpful consultation in her weekly consultative and supervisory meetings with Mrs. Kirby. Mrs. Kirby kept Mrs. Archer well informed about Kim, but Mrs. Archer's own observations of Kim were helpful to a better understanding of Mrs. Kirby's reports to her.

Mrs. Archer's testimony was to the effect that she became aware of, but did not participate in the making of the decision to return Kim. She learned of it from Mrs. Kirby when Mrs. Kirby told her that the Society was arranging to have Kim visit her parents in their home. Mrs. Archer said that home visits were initiated in respect of every child who was to be returned home by the Society. I am satisfied that that is good practice.

Mrs. Archer testified that, until the decision was made by the Society to return a child to the family home, the Society required visits between the child and parents to be in the Society's offices except in unusual circumstances.

Mrs. Archer testified that she was not involved in or consulted about the decision to return Kim. She was not directly advised of the decision, but merely deduced it had been made when home visits by Kim were arranged. All of that was in keeping with the usual practice within the Society.

I accept Mrs. Archer's testimony in this whole area.

Mrs. Archer was aware of Mrs. Kirby's concern over Kim's proposed return home. She was also aware of the general nature of Police Constable Wyville's strongly expressed objection. That too was from Mrs. Kirby. Mrs. Archer was not able to say when she became aware of Mrs. Kirby's concern or Police Constable Wyville's remark.

Mrs. Archer testified that it was not unusual for workers in the Children's Services Department of the Society to be concerned about a decision that a child would be returned to his or her parents. She said that such decisions were not part of that department's "province."

I was surprised and disappointed to hear Mrs. Archer speak in rather defeatist tones when she testified in this area. My surprise and disappointment have a common root which remains as I write. That common root is my assessment of Mrs. Archer. I regard her as a dignified and gentle lady, highly dedicated to the ideals of service to others in her life's career of teaching and social work in Canada and abroad, highly qualified to meet her own high standards and with a will every bit as strong as that of Mrs. Harvey.

As I review her testimony in the light of all of the testimony upon the Inquiry my surprise and disappointment dissipate, but my high opinion of Mrs. Archer remains.

Mrs. Archer spoke of decisions to return children being made by the Family Services Department of the Society or by the Court. She continued:

"...you might express opinions or feelings as we often do in many situations, but we didn't expect these expressions to have any great validity because we were not in the decision-making position."

When asked if the Children's Services Department was not in such a position because it did not have all the facts, she replied:

"This is true and you see we were aware of this because in many situations, other situations, where children were going back we were really concerned and we may or may not voice our concern but in many ways it wasn't our business."

In another response, when asked if she or Mrs. Kirby had expressed any concern about Kim's proposed return when it was discussed early in May, 1976, but only as to when it was to be effected, she said:

"Not that I am aware of because this was an area between the two departments where we had often disagreed very thoroughly because our outlook on the service to the client

was totally different and there were many situations where we had concerns."

I am satisfied that that tone of defeat in Mrs. Archer's testimony came about because of the organization of the Society whereby Mrs. Harvey was granted or assumed and maintained a role of dominance through the Family Services Department. I initially felt that Mrs. Archer should have entered into the controversy and opposed the decision to return Kim. I am now satisfied she felt or knew it was a hopeless contest because of the development of the Society's organization and administration which gave the Family Services Department dominance with reference to the return of children from the care of the Society.

Thus Mrs. Archer's resignation, as it were, to the inevitable is understandable. But Kim might have benefitted if Mrs. Archer had chosen to wage one more good fight no matter how hopeless it might have seemed.

Mrs. Archer had no further involvement with Kim's care after her return home on May 27, 1976.

As I near the end of this Chapter I wish to make it abundantly clear that, while I have expressed varying degrees of criticism of members of the staff of the Society, it is criticism of their skills and expertise and of their performance of their various duties. I do not recall that anyone who testified upon the Inquiry said that any person associated with the Society was other than conscientious, concerned and hard-working. I am not to be taken to suggest otherwise.

The only other employee who testified was Mrs. Dorothy Winifred Myers. Mrs. Myers was the office manager of the Society.

Mrs. Myers testified as to the procedures followed by the Society in preparation and maintenance of files, records and associated materials.

Like everyone else, Mrs. Myers had no explanation for the hiatus in the administration of Kim's case between June 17 and August 31, 1975. That is understandable. No one put any record into a position where Mrs. Myers or any of her subordinates

would have cause or opportunity to deal with it and to perform the usual administrative functions.

I am satisfied that Mrs. Myers properly fulfilled her duties in respect of Kim's case, including due and sufficient notification to Mrs. Harvey and Mrs. Lo in late July, 1976 that the initial order placing Kim in the care of the Society would expire in late August, 1976. At that time she inquired as to whether the Society would be making any further application to the Court in respect of Kim.

I am satisfied that Mrs. Myers and others in the office of the Society, if required or requested to do so, could and would have quite adequately done many of the tasks related to preparation of the budget and financial records of the Society. It was not the fault of Mrs. Myers and others of the office staff of the Society that Mr. Lovatt found such matters to be so demanding and time-consuming.

Mrs. Myers, in her testimony, spoke of rumours that pressure had been put upon the Society by Mr. Higgins. The tone of that testimony suggested that such pressure was improper.

I am satisfied that, if there were such rumours, there was no factual basis for them. Mr. Higgins certainly acted vigorously on behalf of his clients and that vigorous action may have created pressures for the Society. There was no improper pressure exerted upon the Society by Mr. Higgins or any one else. Nor was any pressure improperly exerted by Mr. Higgins.

Whatever sense of pressure existed was simply the result of a skilled advocate practicing his profession vigorously and effectively coupled with the inadequacies of the Society and its staff.

It may have been pressure, but it was not improper and it was not improperly applied.

Mrs. Myers in her testimony illustrated the validity of the concern expressed by the Farina Committee and Mr. Zwerver that there was not an appropriate separation between the professional or social work staff and the clerical or office staff of

the Society. She testified that she attended management meetings and meetings of the staff, including office and clerical staff, called for the purpose of reviewing case work decisions and the rumours of improper pressure upon the Society.

Chapter XIX

The Role of the Sarnia Police Force

Before examining the role of the Sarnia Police Force in Kim's life, it is appropriate to refer to particular provisions of The Child Welfare Act as it was in 1975 and 1976. They are among those comprising Schedule 2-B to the Report. For the sake of brevity in this Chapter, I will describe The Child Welfare Act as the "Act" and the Sarnia Police Force as the "Force."

Section 21 of the Act gives to a constable or other police officer, who has reasonable and probably grounds to believe that a child is apparently in need of protection, authority to take that child to a place of safety and to detain the child pending application to a judge. The authority so given to police officers is the same as that given to persons such as the Director appointed under the Act and the local directors of children's aid societies or persons authorized by any of them.

Section 49 of the Act makes it an offence for any person having the care, custody, control or charge of a child to fail to protect that child.

The members of the Force, like all other members of the community, are subject to the provisions of section 41 of the Act. By that section every person having information about physical ill treatment of a child or of a child's need for protection is required to report the information to a children's aid society or Crown attorney.

The involvement of the Force in Kim's life began on Monday, June 16, 1975. At about 2:30 o'clock in the afternoon of that day, Dr. Jumeau telephoned the Force. He spoke to Staff Sergeant James Allan, a police officer in charge of the Morality Office of the Force. The Morality Office of the Force is responsible for the investigation of cases or reports of child abuse.

Staff Sergeant Allan was aware that Dr. Jumean was a medical doctor practising in the City of Sarnia. Staff Sergeant Allan testified that Dr. Jumean stated that Kim had been brought to his office that day by a person who wished to remain anonymous. Dr. Jumean told Staff Sergeant Allan that Kim then had a cut and severe bruises on her face, neck and buttocks. Dr. Jumean continued to say that Kim had been admitted to hospital about six weeks previously when she had a broken arm. Dr. Jumean told Staff Sergeant Allan that about three weeks before his telephone call he had treated Kim for a respiratory problem and noticed she had then a black eye. In the same conversation Dr. Jumean spoke of what Staff Sergeant Allan chose to call "hearsay evidence" that Annals Popen, when drunk, assaulted Jennifer Popen who in turn beat Kim.

Dr. Jumean's testimony was confusing. I have dealt with the confusion in Chapter VI of the Report while reviewing events in Kim's life between April 30 and August 31, 1975. As set forth in that review, I am satisfied that Dr. Jumean telephoned to the Force on June 16, 1975, but Kim had been brought to his office on June 6, 1975.

In keeping with the procedure of the Force, Staff Sergeant Allan dictated a memorandum about that telephone call. That memorandum was typed as an item in the Force's Investigation Report upon the incident. As the matter proceeded, other items were added to the Investigation Report by police officers involved from time to time during Kim's life. A copy of it was filed as an exhibit upon the Inquiry.

When asked what action he had taken upon receipt of that information from Dr. Jumean his reply was:

"A. I had nobody working that afternoon so the investigation was assigned to Constable Gander the following morning. He was advised to go to the Children's Aid and have a worker accompany him to the residence."

That action by Staff Sergeant Allan was not appropriate. Witnesses who appeared upon the Inquiry and who were asked any question about it were unanimous in the opinion that reports of abuse of

children are matters of serious importance and should receive a high priority.

Police Constable Gander testified that he had been assigned to the investigation between 9 and 9:30 o'clock during the morning of June 17, 1975.

He was asked what he had done then. His reply was:

"A. Well, I had to go to court that morning at ten o'clock and as soon as I got out of court I just went directly across to the Children's Aid Society. At approximately 10:20 A.M. I arrived there and talked to Mrs. Dick."

Police Constable Gander then had not acted immediately upon the assignment.

The effect of Staff Sergeant Allan's delay in assigning the case to Police Constable Gander, compounded by Police Constable Gander's delay of about one hour, was that for about twenty hours after receiving Dr. Jumeau's telephone call the Force did nothing to ascertain whether or not Kim was in need of protection.

What I am about to write may be a harsh statement, but in my view it is merited. The Force's response to Dr. Jumeau's telephone call was akin to dereliction of duty.

Some witnesses upon the Inquiry suggested that the source of any report of suspicion of child abuse might affect the initial assessment as to the validity of the report. The tenor of the suggestion was that reports from medical doctors would be given high credibility immediately because medical doctors, by training and experience, had abilities to detect and assess injuries that might not be observed by laypersons. They too might have some ability to detect the presence or possible presence of abuse in relation to any injury suffered by a child.

In this instance on June 16, 1975 at about 2:30 p.m., the Force had received from a medical doctor a statement that within the preceding six weeks Kim had been in hospital with a broken arm on

one occasion, she had a black eye when treated for a respiratory ailment on another occasion and she had a cut lip and severe bruises on her face, neck and buttocks when presented to that doctor on yet another occasion. In six weeks three distinct incidents of a broken bone, a black eye, a cut lip and severe bruises, all apparently within the personal knowledge of the doctor reporting the matter to the Force.

In addition to that information, the doctor also reported to the Force the suspicion of his informant, whom he did not name, that Kim was the victim of abuse. He reported the suggested chain of assaults, beginning with the assault by a drunken father upon the mother who then assaulted the child.

It is incomprehensible to me that any police officer would, without immediate investigation of the circumstances in that child's home to satisfy himself or herself as to the child's present safety, permit the child to remain in that home. For about twenty hours Kim remained exposed to all the risks inherent in the circumstances reported by Dr. Jumeau to the Force. There was a history of earlier illness and severe injuries. There was a suggestion of a drunken, abusive father and an abused and abusive mother. Even without more there was ample cause for concern for the safety of a child in such conditions.

Staff Sergeant Allan's only excuse for not assigning a police officer to make an immediate investigation was "I had nobody working that afternoon." Even if all other officers in the Morality Office were already assigned to equally important matters, and there was no suggestion they were, there must have been a member of the Force, on duty or available for duty, who could have been assigned to begin an immediate investigation.

Even if the Force were so understaffed and overworked as to prevent the immediate assignment of a police officer, and again there was no suggestion that that was the situation of the Force, a duty lay upon Staff Sergeant Allan and thus upon the Force to have reported the matter to a children's aid society or Crown attorney pursuant to section 41 of the Act. Such a report was not made until about twenty hours had expired.

When Police Constable Gander did report to the Children's Aid Society on June 17, 1975 he gave to Mrs. Dick and to Mrs. Saul of the Society the information which he had. The Society responded promptly.

However, in the transmission of information orally from Staff Sergeant Allan to Police Constable Gander and again orally from him to the Society, an error or misunderstanding arose. Mrs. Saul and Mrs. Dick understood that the call to the Force had been anonymous. They did not understand that Dr. Jumeau had made the call to the Force.

Having reported to the Society, Police Constable Gander accompanied Mrs. Saul and Mrs. Hoad to find and examine Kim. Effectively, he relied upon their assessment of Kim's physical condition and their determination that there were not then grounds to justify her removal by the Society.

In my view, Police Constable Gander's reliance upon that assessment and determination at that particular time was appropriate. The responsibility for Kim's protection at that time lay primarily upon the Society.

Police Constable Gander rendered any assistance required by Mrs. Saul and Mrs. Hoad on June 17, 1975. He prevented Jennifer Popen from removing Kim before the Society's workers had satisfied themselves as to the circumstances then existing.

Police Constable Gander relied upon Mrs. Saul's statement to him that she would advise the Force of observations made by Society's personnel who were to visit the Popen home within the following week. Mrs. Saul denied having made the statement, but, as outlined in Chapter VI of the Report, I prefer Police Constable Gander's testimony to that of Mrs. Saul in this area.

On July 2, 1975 he telephoned Mrs. Saul and learned that Kim's case had been assigned to Mr. Carter.

On June 18, 1975, Mrs. Kuly of The Lambton Health Unit had telephoned the Force for some information about Kim. Staff Sergeant Allan advised her

of Police Constable Gander's comments as recorded in the Force's Investigation Report and that the matter now lay with the Society.

The Force's Investigation Report contains no mention of that telephone conversation with Mrs. Kuly.

The Force did nothing further and had no involvement with Kim until August 31, 1975.

I am critical of the Force for not having undertaken any investigation to determine whether or not there had been any breach of the Criminal Code or of any other legislation such as the Act. I appreciate that Kim's protection was primarily the responsibility of the Society who had a duty to provide and ensure that protection.

To say that the prime responsibility for Kim's protection lay with the Society does not excuse the Force of its duty to investigate the report of other offences. Included in the list of alleged offences mentioned by Dr. Jumeau were Annals Popen's assaults upon Jennifer Popen and Jennifer Popen's assaults upon Kim. Those latter alleged assaults, if investigation supported the validity of the information, would have justified prosecution of Annals Popen and Jennifer Popen other than under section 40 of the Act.

The full extent of the Force's investigation of the matters mentioned by Dr. Jumeau was Police Constable Gander's visit with Mrs. Saul and Mrs. Hoad to see Kim on June 17, 1975 and his telephone call to Mrs. Saul on July 2, 1975.

That was not an investigation in any real sense. No effort was made to ascertain the circumstances surrounding Kim's hospitalization with a broken arm or the incident of the black eye. No effort was made to inquire of Dr. Jumeau as to his observations on any occasion. No effort was made to resolve the apparent discrepancy between Dr. Jumeau's report of severe bruises on Kim on June 16, 1975 and the inability of Mrs. Saul and Mrs. Hoad to see any bruises on Kim on June 17, 1975. The discrepancy was explained to my satisfaction upon the Inquiry. As I have noted in Chapter VI of the Report, Dr. Jumeau

saw Kim on June 6, 1975, not on June 16, 1976, and in that period of eleven days from June 6 to June 17, 1975, the bruises had healed and were not so visibly apparent.

By failing to conduct a full and proper investigation of all of the elements of Dr. Jumeau's report the Force failed Kim.

A motto of police forces in Ontario is centred on their duty and willingness to serve and to protect.

Kim needed the service and protection of the Force. That would have been inherent in such an investigation. She did not receive it.

Kim in June, 1975 was five months old, a helpless defenceless child. Upon the basis of the testimony upon the Inquiry as to the information which the Force would have found in June, 1975 had an appropriate investigation been undertaken, I am satisfied that in June, 1975 sufficient evidence was available to merit an application to the Provincial Court (Family Division) to declare Kim to be a child in need of protection. No one now can say what result might have come from such an application. One result might very well have been the prevention of the ultimate tragedy.

Kim needed the protection that a proper investigation by the Force would have offered to her. She did not receive it.

On August 31, 1975, a somewhat different situation developed. Kim was in hospital. She had suffered injuries. Medical personnel were concerned for her safety.

This time a member of the Force responded promptly to the call from the hospital for assistance. He was not a member of the Morality Office of the Force, but he attended to provide police service and protection until a member of that office was able to respond.

This time Police Constable Wyville, a member of the Force, promptly notified the Society of

the situation and the Force provided assistance to Mrs. Dick of the Society when she attended there.

This time Police Constable Wyville and other members of the Force did undertake an investigation because of what was observed and learned at the hospital on August 31, 1975.

As a result of that investigation and after consultation with the Crown Attorney, Police Constable Wyville, on October 16, 1975, swore on information alleging that Annals Popen and Jennifer Popen, contrary to section 40 of the Act, had failed to protect Kim during the period from January 11, 1975, the date of her birth, until August 31, 1975.

In Chapter VI of the Report I have reviewed the testimony given upon the Inquiry as to the consultations between members of the Force and the Crown Attorney. I have concluded that the Force was well advised to proceed under the Act rather than by way of a charge, perhaps of assault causing bodily harm, under the Criminal Code.

Having said that, I add that the extent and quality of the investigation conducted by members of the Force and the preparation for trial were not satisfactory.

So that readers of the Report might better understand my comments and the reasons for them, a copy of the Force's Investigation Report is reproduced as Schedule 2-0 to the Report. Henceforth in this chapter I shall sometimes call the Force's Investigation Report merely the "Investigation Report".

The Investigation Report is composed of ten paragraphs on about one page of paper typewritten for Staff Sergeant Allan and Police Constable Gander. Two of those paragraphs recount the information given by Dr. Jumeau by telephone on June 16, 1975. Seven recount Police Gander's actions and information gained therefrom on June 17, 1975. The tenth recounts Police Constable Gander's telephone call of July 2, 1975.

On less than one page, in eight brief paragraphs, Police Constable Wyville recorded the

actions of himself and other members of the Force on August 31, 1975. The last of those paragraphs was simply a statement that Police Constable Wyville advised Annals Popen and Jennifer Popen that an investigation would be held and charges might be laid.

The Investigation Report does not disclose any further action by Police Constable Wyville or any other member of the Force. Upon the testimony given during the Inquiry, I am satisfied that members of the Force did various things after August 31, 1975 in purported investigation of Kim's injuries. They did not follow the procedure which Staff Sergeant Allan said existed whereby the Investigation Report became an ongoing document with each development in the investigation being recorded by the officer involved.

The reason for such a procedure is apparent. It enables supervisory officers of the Force to ascertain quickly and concisely the state of any investigation at any time. It is a convenient summary of information and saves the supervisory officers the task of reading the note books of all officers each time the case is reviewed either for police purposes or to respond to questions from other sources. An instance of the latter was the telephone call from Mrs. Kuly of The Lambton Health Unit to Staff Sergeant Allan on June 18, 1975. So far as the written record of the investigation is concerned, if Mrs. Kuly had telephoned at any time after August 31, 1975 Staff Sergeant Allan would not have been able to tell her anything more than he had on June 18, apart from Police Constable Gander's telephone call of July 2, 1975 and the events of August 31, 1975 all of which, as recorded, occurred at the hospital.

The procedure of updating the Investigation Report enables supervisory officers of the Force to have a recorded base of information to serve as a basis for directions to junior officers engaged in various aspects of the case. It makes easier the task of the member or members of the Force who must prepare instructions for Crown Counsel prior to any hearing or trial. Hereafter I will sometimes call such instructions the "Crown Brief."

For the assistance of readers of this Report, a copy of the Crown Brief in connection with

the charge under the Act laid against Annals Popen and Jennifer Popen is reproduced as Schedule 2-D to the Report.

Police Constable Wyville was the member of the Force who was regarded as being the investigating officer. As he testified he referred to what he called his "investigation notes." He said that his involvement with Kim's case began with the call from the hospital to the Force at about 3:10 p.m. on August 31, 1975. He was not certain that he was then made aware of the Investigation Report begun by Staff Sergeant Allan on June 16, 1975 and continued by Police Constable Gander on June 17 and July 5, 1975. Certainly he saw the Investigation Report when he added to it paragraphs numbered 11 to 18, inclusive, outlining events of August 31, 1975.

On August 31, 1975, Police Constable Wyville arrived at the hospital shortly after Police Constable Kennedy who remained, but who had only a minor involvement. Police Constable Kennedy had been dispatched to "cover" until a member of the Force's Morality Office was available.

That was an appropriate assignment. A police officer was in prompt attendance at a situation in which medical personnel at the hospital were concerned for Kim's safety in the presence of her parents, one of whom wished to remove her from hospital. The medical personnel requested and received prompt service and protection by the Force for Kim and themselves.

Police Constable Kennedy had seen Kim and her injuries. He said those injuries were shown in the photographs taken later that day by Police Constable Turner. Police Constable Kennedy said that what he had seen of Kim's injuries satisfied him that she was "badly battered" and that her injuries were caused deliberately, not accidentally. Police Constable Kennedy had remained with Police Constable Wyville for a short time, especially while Police Constable Wyville interviewed Jennifer Popen. Police Constable Kennedy made no notes of the incident and, as he said, he was "hazy" as to what had occurred and who were present. He was unable to recall even the day of the week on which these events occurred. In his testimony upon the Inquiry, he said he had then

told Police Constable Wyville of his own visual and aural observations.

Police Constable Kennedy's involvement was so minor in the eyes of Police Constable Wyville that on October 23, 1975, when Police Constable Wyville prepared the Crown Brief he did not mention Police Constable Kennedy.

In my view, regardless of the seemingly minor role he played, Police Constable Kennedy should have kept some notes of the occurrence. If nothing else he was present at a discussion between the investigating officer and Jennifer Popen who, if not immediately a subject of investigation, would likely soon be such a subject.

The absence of notes seemed to be symptomatic of the approach of the Force to the investigation. They seemed to approach it as a minor matter which did not merit the careful investigation and preparation for trial which would be entailed in cases which they regarded as being more serious. I will make reference to some of the oral testimony given upon the Inquiry which supports my view.

Police Constable Wyville was asked to describe the investigative procedures he undertook. He told of having spoken with Mrs. Hewitt, a nurse, on August 31, 1975 at the hospital. She permitted him to see Kim. She said that doctors felt Kim was an abused child. Mrs. Hewitt told him of Kim's admission to hospital "the evening before that," but he made no notation of the time she mentioned as the time of admission.

Hospital records and other evidence upon the Inquiry show that Kim was presented at the hospital and admitted at about 1:25 a.m. in the very early hours of that day. That is hardly "the evening before." Absence of records of details of that nature from police reports is an indication that the Force did not, at least initially, regard Kim's case as one meriting careful and meticulous investigation and preparation of records thereof for police files and possible proceedings in Court.

Police Constable Wyville did speak with Dr. Thorp and Dr. Singh while at the hospital. He was

told by them that they felt Kim was "a misused or battered child or both."

Police Constable Wyville said that the injuries he saw on Kim were as shown in the photographs taken by Police Constable Turner.

Police Constable Wyville testified that he had spoken with Annals Popen and Jennifer Popen at the hospital, but it was a rather fruitless effort. Annals Popen was not communicative except to the extent to which Jennifer Popen permitted him to be. Jennifer Popen attributed Kim's injuries to Kim's own activity and falls from her crib and dresser drawers. Jennifer Popen was hostile, resentful and uncooperative. None of that is recorded in the Investigation Report or in the Crown Brief.

Police Constable Wyville testified that Mrs. Hewitt had been concerned about Jennifer Popen's attempts to remove Kim from the hospital before the arrival of any member of the Force. That is not recorded in the Investigation Report or in the Crown Brief.

On the basis of the testimony of skilled and experienced social workers who appeared as witnesses upon the Inquiry, I am satisfied that information as to the conduct and attitude of parents in the face of injury to their child and as to the remarks made by them in explanation of the child's injuries, is of importance in the investigation and ongoing management of cases of child abuse. That is particularly so when, as in Kim's case, on the basis of expert medical testimony, those explanations are not reasonable when considered in the light of the nature and extent of the injuries suffered by the child. They are not consistent with the nature and extent of the injuries.

I am satisfied that information of that sort, while it might not be admissible in a prosecution under the Criminal Code alleging that one or both of the parents had assaulted the child, would be of assistance to a provincial judge sitting in provincial court (family division) upon an application for an order declaring the child to be a child in need of protection under the Act.

Even if the Force was not directly involved in the application by the Society in the Provincial Court (Family Division) of the County of Lambton for such an order, the Force, in performance of its duties as set forth in section 55 of The Police Act, should have recorded that information so that it would be available if a member of the Force was called upon by the Society for information or was subpoenaed as a witness upon the application.

As I have mentioned in other chapters of the Report, I am aware that the Society was insular and did not initiate and maintain contact with other institutions and agencies in the community, including the Force. However, if someone from the Society had telephoned the Force for information, as Mrs. Kuly of The Lambton Health Unit had done on June 18, 1975, and, like she, had had to rely solely on the information which any member of the Force would have had available for the appropriate disclosure from the written records of the Force, that information, valuable to the Society to support its application, could not have been given because it was not recorded.

I recognize that if the person from the Society were persistent or aggressive and went beyond the written records of the Force and spoke directly with Police Constable Wyville he might have remembered this information or have had a note of it somewhere. He did testify that at the hospital on August 31, 1975, he told Mrs. Dick of his "brief involvement at that time" and explained the difficulty he had encountered in talking with Annals Popen and Jennifer Popen. He said that as a result of that, Mrs. Dick, with Dr. Singh and perhaps Dr. Thorp, interviewed Kim's parents. His uncertainty as to Dr. Thorp's involvement was another instance of the frailty of Police Constable Wyville's memory and his lack of adequate notes.

I recognize as well that the Society bears the prime responsibility for the preparation and presentation of an application for an Order declaring a child to be a child in need of protection under the Act. However, that does not relieve the Force of its duties under The Police Act.

Under section 55 of The Police Act, members of the Force

"are charged with the duty of preserving the peace, preventing...crimes and offences ...apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders..."

The Force was responsible for the investigation of the circumstances surrounding all of Kim's injuries and, if the results of that investigation warranted it, the prosecution of anyone who caused those injuries or, by failing to protect her, permitted her to suffer those injuries.

As required by The Police Act the Force assumed those responsibilities. But having assumed them, the Force did not adequately fulfill its obligations or perform its duties.

On the basis of the testimony presented upon the Inquiry, there were various incidents of Kim's hospitalization, illness, injury and alleged injury which occurred prior to August 31, 1975. All of those incidents should have been investigated by the Force.

The first incident was Kim's hospitalization on March 22, 1975 when her major injury was the severe fracture of her left humerus.

As I have noted earlier in this chapter, that incident should have been investigated in June, 1975, but was not. The Investigation Report is silent as to what investigative steps were taken after August 31, 1975. The Crown Brief is not very informative. It says in effect only that "further investigation" revealed Kim's medical history, including "admitted to St. Joseph's Hospital with a fractured left arm on March 22, 1975."

I presume the reference to "further investigation" means that Police Constable Wyville did something and learned something after talking with "doctors and nurses" at the hospital on August 31, 1975, but the Crown Brief does not indicate what he did or when he did it.

The Crown Brief goes on to say that Mr. Carter of the Society can "give past history and involvement with the Popens." An examination of Mr. Carter's testimony upon the Inquiry shows how limited such testimony would have been. Mr. Carter's involvement with Kim's family was minimal when the Crown Brief was prepared on October 23, 1975 and even that involvement was subsequent to August 31, 1975. That was hardly "past history and involvement."

The Crown Brief continues with the notation that Mrs. Hewitt saw the marks on Kim on August 31, 1975 and had seen similar marks on her in the past. There is no explanation of the meaning of the words "in the past". If they related to the March 22, 1975 incident, the Crown Brief would seem to be in error because in all of her testimony upon the Inquiry, Mrs. Hewitt did not say that on March 22, 1975 she saw any marks on Kim, let alone marks similar to those which were on her body on August 31, 1975.

She testified that she had interviewed Jennifer Popen on March 22, 1975 when Kim was admitted to hospital. She said that Jennifer Popen gave a number of conflicting explanations for Kim's injuries. The Crown Brief does not mention that.

I have already written about the significance of evidence as to the behaviour and attitude of parents and the explanations they give for any injuries to their child.

The Crown Brief mentions Dr. Singh and his testimony. Most of the notation in the Crown Brief is a recital of the nature of Kim's injuries on March 27, 1975 and August 31, 1975. There is no mention that Dr. Singh had spoken with Jennifer Popen in March, 1975 and she had given to him an explanation for Kim's injury, but the explanation did not correspond to or "was not compatible with" the nature of Kim's injury. The nature of the injury and the inadequate explanation for it formed the basis for Dr. Singh's suspicion that Kim had been abused in March, 1975. The notation concludes with Dr. Singh's opinion, expressed in the present tense that Kim is "battered." By the use of the present tense that opinion does not relate to the March incident.

While the Crown Brief indicates that Dr. Singh examined Kim on March 27, 1975, that is not correct. He examined her on March 26, 1975. His typewritten report upon that examination is dated March 27, 1975. In that typewritten report he wrote of his suspicion of child abuse and the basis for the suspicion. He also prophesied that if Kim were not protected "she might end up with a fractured skull." That prophecy is not mentioned in the Crown Brief.

The Crown Brief mentioned Dr. Jumean. His testimony was expected to relate to his examination of Kim on June 16, 1975 and to two events during the preceding six weeks. It was not related to the injury of March 22, 1975. Dr. Jumean's testimony upon the Inquiry showed he had not seen or attended Kim during her hospitalization in March, 1975.

Thus the Crown Brief contained little information about Kim's hospitalization in March, 1975 and the serious concern it caused to Dr. Singh who suspected that Kim was, even in March, 1975, a victim of abuse and in danger of a recurrence of abuse.

The Crown Brief continued Kim's "medical history" with the notation that she was "admitted again with black eyes on April 22, 1975." The only other reference in the Crown Brief to black eyes or black eye is in the summary of Dr. Jumean's testimony as expected by Police Constable Wyville. In that summary there is a reference to Dr. Jumean's having seen Kim with a black eye when he examined her at hospital for a respiratory ailment about three weeks prior to June 16, 1975. April 22, 1975 is certainly much earlier than "about three weeks" prior to June 16, 1975.

The evidence upon the Inquiry was that Dr. Jumean admitted Kim to hospital on April 28, 1975 because of a respiratory infection. Upon the Inquiry, after he had confirmed that he had admitted Kim to hospital at that time he was asked the following question and made the following response:

"Q. All right. Now, did you make any observation at that time of child abuse or any external signs of it in April of 1975?

A. No, sir."

None of the documents relating to the April, 1975 admission to hospital mention that a black eye or black eyes had been noted at that time.

The Crown Brief is in error as to the date of Kim's admission to hospital in April, 1975 and as to the presence of black eyes when admitted.

The Crown Brief is substantially correct, so far as it goes, with reference to the injuries discovered on August 31, 1975 when Kim was admitted to hospital. But it is not complete. It makes no mention of the discovery, by X-ray, of fractures of ribs suffered by Kim some weeks earlier, between her admissions to hospital in March, 1975 and August, 1975.

Another deficiency in the Crown Brief is the absence of any reference to an incident mentioned by Mrs. Hewitt in her testimony upon the Inquiry. She spoke of having seen Kim, with Jennifer Popen, in a shopping mall in Sarnia at some time, perhaps in June, July or August, 1975. She said that Kim had black eyes then and she spoke of Jennifer Popen's rather brash behaviour.

The Crown Brief is inaccurate in two ways. It is inaccurate in some of its contents. It is inaccurate because of its omissions.

Police Constable Wyville testified that in his investigation on and after August 31, 1975, he spoke with Mrs. Dick and Mr. Carter of the Society, Mrs. Hewitt, Dr. Singh, Dr. Jumeau, Police Constable Turner, Police Constable Kennedy and Miss Jean Cappa who was in charge of hospital records.

There was no testimony to indicate what information he sought or received from those to whom he spoke. As I have attempted to show by my comments in this area, the Crown Brief is not very enlightening.

Upon the prosecution of Annals Popen and Jennifer Popen upon the charge under section 40 of the Act, the only evidence was the summary read by the Assistant Crown Attorney. It was essentially a recital of the Crown Brief. It was sufficient, on

Annals Popen's plea of guilty, to enable Judge Nighswander to make a finding of guilt. The Force was responsible for the assembly of the evidence to be presented by the Crown Attorney upon that trial. The Crown Attorney was entitled to rely upon the accuracy and thoroughness of the Crown Brief.

In my view, the presentation of only that limited amount of evidence was not fair to Judge Nighswander. He did not receive a complete description of Kim's circumstances. If the Force had assembled and presented, even if only by way of the Crown Brief, all of the evidence available to it by proper investigation, the testimony upon the trial before Judge Nighswander would more nearly have approximated the facts.

Even if one assumes that all of the witnesses listed in the Crown Brief had been subpoenaed and were available to testify upon the trial, it would not necessarily follow that examination of those witnesses would have elicited more information than was in the Crown Brief.

Mr. Hibberd, Assistant Crown Attorney, was asked his opinion of the Crown Brief. He described it as "average." He said that in relation to what might be expected for a trial in The Supreme Court of Ontario or The County Court of the County of Lambton, the Crown Brief was "short." That assessment is confirmatory of my previously expressed opinion that the Force, through Police Constable Wyville and whichever other members may have assisted him, approached the matter as if it were not as serious as matters that would be tried in The Supreme Court of Ontario or The County Court of the County of Lambton.

Mr. Hibberd properly declined to try to place child abuse in some position, determined by assessing the gravity of the matter, within a list of offences. On the testimony upon the Inquiry and the expressions used by witnesses, child abuse must be regarded as a serious matter. It is not necessary to try to relate its gravity to the gravity of any other offence.

One must wonder why Police Constable Wyville did not interview other people, such as Mr. Khattab, the hospital's social worker.

In March, 1975 Dr. Singh had asked Mr. Khattab to investigate the background of Kim's family. That was recorded in Kim's files in the hospital and in Dr. Jumean's office. An interview with Mr. Khattab would be necessary before Police Constable Wyville could regard his investigation as complete. I am not to be understood to say that what Mr. Khattab could tell Police Constable Wyville would be particularly helpful. I have assessed Mr. Khattab's performance of his duties elsewhere. However he had spoken to Jennifer Popen and he may have received some information. Police Constable Wyville could not get even that without speaking to Mr. Khattab.

There was no evidence to indicate that Police Constable Wyville was aware of Mr. Khattab's involvement in the case. There was no evidence to suggest that Police Constable Wyville had seen Kim's files or had even asked to see them.

In testimony upon the Inquiry, witnesses spoke of explanations for injuries which were not compatible with the injuries. They said that that might be an indication that the injured child had been abused. Without speaking with Mr. Khattab Police Constable Wyville could not have learned of the explanations given by Jennifer Popen to Mr. Khattab. The witnesses spoke of explanations given which were not consistent with other explanations given by the same person for the same injury. Without knowledge of the explanations given to Mr. Khattab, no one could determine if they were reasonable or if they were consistent with the injuries which Kim had suffered.

Police Constable Wyville did not interview Dr. Thorp who had examined Kim on each of her admissions to hospital in March and August, 1975.

Police Constable Wyville did not interview Dr. McCrudden, the radiologist, who had, by X-Ray, discovered the presence of rib fractures suffered some weeks prior to August 31, 1975. An interview with Dr. McCrudden or some other radiologist would be essential to a complete investigation. If nothing else it would have revealed the evidence of rib fractures.

Nothing in the testimony upon the Inquiry indicates that Police Constable Wyville or any member of the Force was, at any time prior to Kim's death, aware of all of the injuries she suffered between her birth and August 31, 1975. Evidence in respect of those injuries was available in February and March, 1976, and even in September and October, 1975, if a complete investigation had been conducted by the Force.

The Force did not conduct a thorough and complete investigation of the injuries suffered by Kim on or before August 31, 1975. The Force failed in its duty. It neither served nor protected Kim.

In Chapter XIV of the Report, in which I review Mabel Harvey's role in Kim's life, I comment upon the scanty evidence presented in support of the Society's application on February 25, 1976. Essentially it was a repetition of the summary of evidence upon the earlier trial resulting from the charge under section 40 of the Act.

Police Constable Wyville testified very briefly as to his observations at the hospital on August 31, 1975. In cross-examination he mentioned two explanations for Kim's injuries which Jennifer Popen had given to him. Police Constable Turner testified as to photographs he had taken showing Kim's injuries. Miss Cappa testified as to records of the dates of Kim's admissions to or treatment in hospital and the nature of the illness or injury.

Dr. Singh testified as to his observations of Kim in March, 1975 and the explanation given to him that Kim's injury occurred while Jennifer Popen was changing Kim's clothing. In cross-examination Dr. Singh testified as to his observations of Kim on and about August 31, 1975. He said Kim's activities as related to him by Jennifer Popen were "a little unusual".

Mrs. Hewitt testified as to Kim's injuries which she saw on August 31, 1975 and her opinion that they had not been caused in the manner related by Jennifer Popen. Mrs. Dick testified as to her actions at the hospital on August 31, 1975 when Kim was taken into the care of the Society. Mrs. Kirby

testified as to Kim's care by the Society after August 31, 1975.

Jennifer Popen was called upon by Judge Nighswander and gave some confused and confusing testimony as to Kim's injuries in March and August, 1975 and their causes.

There was no testimony that any of those witnesses had been interviewed by anyone in preparation for the trial or the hearing. In connection with the trial of the charge under section 40 of the Act the Force and Crown Attorney would be responsible for the preparation for trial. The Force did not properly prepare for trial and did not prepare a complete Crown Brief to enable the Crown Attorney to present a complete description of the circumstances surrounding Kim's care by her parents and her injuries. The description was sufficient to support a finding of guilt following Annals Popen's plea of guilty. It was not sufficient to provide adequate information to assist Judge Nighswander in his consideration of what should flow from the finding of guilt.

The inadequacy of the Crown Brief placed Mr. Lang at a disadvantage in determining whether or not to proceed as Mr. Higgins had suggested. Mr. Lang reached his decision on incomplete information.

Another indication of the lack of importance given to Kim's case by the Force is the testimony of Mr. Lang and members of the Force as to the actions of members of the Force after Mr. Lang advised the Force of Mr. Higgins' letter of February 10, 1976 and subsequent conversations. In brief Mr. Higgins had suggested that Annals Popen would plead guilty and had requested Mr. Lang to withdraw the charge against Jennifer Popen.

Mr. Lang quite correctly did not enter into any arrangement with Mr. Higgins before inquiring as to the opinion of the Force as represented by Staff Sergeant Allan. In addition Mr. Lang requested Staff Sergeant Allan to ascertain the view of the Society as to the suggested disposition of the charge under section 40 of the Act.

The members of the Force who testified indicated that they had been satisfied by the proposal. Unfortunately Police Constable Wyville, in his testimony, said that one of the factors which had influenced his decision to tell Staff Sergeant Allan that he was satisfied was his belief that, if Annals Popen were found guilty, it would be virtually impossible to obtain a finding of guilt against Jennifer Popen if she maintained a plea of not guilty. Police Constable Wyville apparently had forgotten the discussions with Mr. Lang which had resulted in the charge being laid under section 40 of the Act rather than under the Criminal Code. The determining factor in those discussions had been that upon a charge under section 40 of the Act, unlike a charge under the Criminal Code, the identity of the person or persons who actually and directly caused Kim's injuries did not have to be proven.

Thus Police Constable Wyville was in error when he permitted himself to consent to Mr. Higgins' suggestion because of any anticipated difficulty in obtaining a finding of guilt against both Annals Popen and Jennifer Popen. The whole purpose of proceeding under section 40 of the Act was to remove that difficulty. The critical element of the offence as charged was failure to protect Kim. In my opinion Annals Popen's plea of guilty, even if accepted by the Court, would not prevent the Court from finding Jennifer Popen to be guilty. Nor would it make it more difficult for the Court to find Jennifer Popen to be guilty.

Staff Sergeant Allan had no record or recollection of the conversations with Mr. Lang nor of anything he had done as a result of it. He was prepared to accept Mr. Lang's recollection of the conversations. I have, elsewhere in the Report, stated that I have accepted Mr. Lang's testimony and made findings as a result.

Staff Sergeant Allan had no record or recollection of having made any inquiry, either personally or by some member of the Force, as to the view of the Children's Aid Society as to Mr. Higgins' proposal. Police Constable Wyville, who would most likely have been ordered by Staff Sergeant Allan to make any such inquiry of the Children's Aid Society, had no record or recollection of having received any

such order or of having made any such inquiry of the Children's Aid Society.

There was no evidence upon the Inquiry to suggest that the Force kept any record, even if only in the note book of any officer, of any such conversation with Mr. Lang or with anyone at the Society. There was no mention of it in the Investigation Report.

In my opinion the Force would be well advised to institute practices and procedures to ensure that in some appropriate place, probably in one or both of the Investigation Report and the Crown Brief, a record be made of such conversations to indicate the parties thereto and the specific result thereof.

What occurred during the Inquiry was unfortunate and came about largely because of the failure of the Force to maintain appropriate records as to the discussions of its members with the Crown Attorney and others interested in the disposition of the case. By reason of that failure by the Force to maintain complete records, I was forced to rely upon other evidence, less direct than what should have been available from the Force's files, to satisfy myself as to the Society's awareness, prior to February 23, 1976, that, upon Annals Popen's pleading guilty and being found guilty, the charge against Jennifer Popen would be withdrawn.

It was about the time of those conversations that Police Constable Wyville, with Police Constable Charlton, visited the Society. While he had no record of it, he did have some memory of the visit, including the eventual gathering in Mrs. Harvey's office. His memory was not complete and he did not remember the event in any particular detail. He could not even remember the remarks attributed to him which had so impressed others and which had proven to be eerily prophetic in predicting that Kim would die within three months of her being returned to her parents' home.

By failing to conduct a thorough and complete investigation of all of the injuries suffered or reportedly suffered by Kim on or before August 31, 1975, the Force failed Kim.

That failure contributed to the fulfillment of Police Constable Wyville's prediction of her death and Dr. Singh's earlier prediction as to the nature and severity of injuries she might suffer if proper steps to protect her were not taken in March, 1975 and in the following months. In saying that I know that the Force was not, until June 16, 1975, aware of any injury that Kim suffered, my finding of failure by the Force relates only to the period commencing with Dr. Jumean's telephone call to the Force on June 16, 1975.

I have given to Chapter XI of the Report the caption "Postlude to Kim's death on August 11, 1976."

The Force was involved in the events described in that Chapter.

As I have written in that Chapter, those events are not within the mandate of the Order of the Minister of Community and Social Affairs appointing me to conduct this Inquiry, but I wish to comment upon them in this Chapter as being a manifestation of the failure of the Force to recognize and act upon incidents which might result in child abuse.

On August 11, 1976 the Force learned of Kim's death. Inspector Donald W. Ross and Staff Sergeant Lyle J. Waters began an investigation into her death. By visiting the family home they learned that the month old male child, Karie, remained there with Annals Popen and Jennifer Popen.

On August 12, 1976 the police officers spoke to Mrs. Harvey and Mrs. Lo of the Society who would not remove Karie from the home because, in their opinion, there was no evidence that he was a child in need of protection under the provisions of the Act. Their view was that the fact that Kim had been grossly abused did not justify the removal of Karie from the family home.

Inspector Ross did pursue the issue but only to the extent that he spoke about it to Dr. McKinlay, a coroner, and to Mr. Lang in the morning of August 13, 1976, the second day after Kim's death and the day after Mrs. Harvey and Mrs. Lo had declined to remove Karie.

In his testimony upon the Inquiry, Inspector Ross acknowledged that he did not fully understand the children's aid system. He said that he and Staff Sergeant Waters had expressed to Mrs. Harvey and Mrs. Lo the opinion that, because of the nature of Kim's injuries, Karie should be removed from the home. As he testified, he and Staff Sergeant Waters were of the opinion that

"we couldn't take a chance and leave [Karie] there; [he] had to be taken out of there somehow."

During the afternoon of August 13, 1976, Inspector Ross and Staff Sergeant Waters went to the Popen home. Karie was there with Annals Popen and Jennifer Popen; Mrs. Harvey and another of the Society's workers arrived with two uniformed members of the Force. They did then remove Karie from the home.

Upon the Inquiry, Inspector Ross was asked why he himself had not removed Karie in the first instance. His reply was

"I felt that the attitude of the Children's Aid I did not have the authority to do so and further I did not have any facility for looking after the child."

That was followed by these questions to and responses by Inspector Ross:

"Q. Well, what had the failing or the attitude of the Children's Aid got to do with you removing the child?

A. They're much better versed in these matters that I am, I would think.

Q. It comes down to this, Inspector, doesn't it, that you were prepared to leave that decision up to the Children's Aid Society?

A. Yes, sir."

Inspector Ross testified that there was no procedure in the Force to apprehend or remove from

his or her home any child whom a member of the Force might deem to be a child in need of protection under the Act. He said the Force "would call in the Children's Aid and stand by until they arrived."

Inspector Ross acknowledged that, in the case of Karie, he "bowed to" the decision of Mrs. Harvey and Mrs. Lo. He said he was aware that the force had the authority, if it felt it appropriate to exercise it to remove Karie. He said it was an authority which was not often exercised.

I am sympathetic to the practical difficulties which would confront any police force which apprehended any child, particularly one as young as Karie was in August, 1976. Mr. Bruce Heath, a member of the Farina Committee, spoke of instances in his experience where members of a police force removed children from their homes as children in need of protection under the Act and then placed them with the appropriate children's aid society. In my view that would have been an appropriate procedure for Inspector Ross and Staff Sergeant Waters to have followed on August 12, 1976.

Even if the Society had refused to receive Karie physically, I am confident that the Force could have arranged in some way for his immediate care pending an application on short notice to the Provincial Court (Family Division) of the County of Lambton for an order declaring him to be a child in need of protection and placing him in the care of the Society. All of that is contemplated by the provisions of section 21 of the Act.

It was perhaps that same sort of attitude by the Force, as represented then by Police Constable Wyville, which brought about on February 19, 1976 expressions of concern for Kim's safety in her own home, but did not lead to any action by the Force to forestall the perceived disaster. On that day and subsequently the Force did nothing to reverse to the decision of Mrs. Harvey and took no steps then or later to prevent the Society from returning Kim to her parents' home as it did on May 27, 1976.

Notwithstanding my criticism of members of the Force for what I perceive to be a failure to assert the authority given to them by section 21 of the

Act, I recognize that the removal of Karie from the Popen home on August 13, 1976 came about primarily because members of the Force were concerned for his safety and expressed those concerns to others who were able to persuade the Society to recognize those concerns and to remove Karie.

I am confident that no one now quarrels with the decision to remove Karie. The wisdom of that decision has been proven. From reading a transcript of portions of the testimony given upon Annals Popen's new trial in December, 1981, I understand that Karie has been made a ward of the Crown under the provisions of the Act and that adoption proceedings have been instituted, if not yet completed.

Both in regard to Kim and to Karie, members of the Force correctly sensed that the child was in a position of danger. Fortunately for Karie others, informed by members of the Force, intervened to cause his being taken to a place of safety. Unfortunately for Kim the members of the Force did not inform anyone other than the Society and then they "bowed" to the decision of the Society to ignore concerns which were, so tragically, valid.

Inspector Ross did speak of arrangements which the Force had instituted to exchange information in certain areas. He indicated, and I accept it as factual, that the Force was willing to share with the Society information relative to the care of children which it might obtain during investigation or otherwise. Inspector Ross acknowledged that, so far as he was aware, that applied primarily, if not exclusively, to children much older than Kim and Karie.

That testimony of Inspector Ross reinforces my criticism of the Society and its insular position within the community.

It was a sad commentary upon the state of affairs in the community which permitted the Society, primarily responsible for the protection and care of children in the community, to dismiss so cavalierly the valid concerns of members of the Force which is another institution in the community given statutory powers to protect children.

Kim was the victim.

Chapter XX

The Role of Medical Doctors

Dr. Jumean was the family doctor to the Popen family from about June 1, 1974. I gather that Dr. Jumean attended Jennifer Popen prior to, upon and subsequent to Kim's birth and attended to Kim until August 31, 1975 and perhaps after May 27, 1976. Dr. Jumean noted nothing unusual in Kim's development or care prior to March 22, 1975.

Dr. Jumean was absent when Kim was admitted to hospital on March 22 and on August 31, 1975 with injuries which are described elsewhere and which were inflicted by Jennifer Popen.

On each of those two occasions Dr. Thorp was "covering for" Dr. Jumean, Dr. Singh was consulted and Dr. McCrudden examined X-rays of various parts of Kim's body.

In the sections of the Report setting forth a somewhat chronological review of Kim's life as revealed upon the Inquiry, I have dealt generally with the various incidents in her life in which these medical doctors were involved.

Kim remained in hospital for about 12 days following her admission on March 22, 1975.

On their own testimony and the various documents produced upon the Inquiry I am satisfied that on Kim's admittance to hospital on March 22, 1975 both Dr. Thorp and Dr. Singh had some concern or suspicion that she might have been the victim of abuse. That concern or suspicion was reflected in the consultation form addressed to Dr. Singh, nominally over the signature of Dr. Lota, but really initiated by Dr. Thorp who had called Dr. Singh, and subsequently in Dr. Singh's report upon that consultation.

In the history forming part of that documentation of Kim's admission to hospital, Dr. Thorp wrote of the injury which was apparent on March 22, 1975 and of examination for other bruises. Two small bruises were found on the left lower chin. He also wrote that there were "no signs of cigarette burns." He mentioned that Mrs. Hewitt, head nurse, had noted Kim's resentment to having her legs lifted and that further X-rays would be taken. To my mind that clearly indicated Dr. Thorp's concern and suspicion that Kim may have been abused even though he did not specifically use any word such as "abuse" or "battered."

In the request for consultation dated March 25, 1975, Dr. Lota wrote:

"?Batter (sic) baby syndrome..."

Upon the same form, apparently on March 26, 1975 Dr. Singh wrote under his heading:

"Impressions," "... (3)? battered child syndrome" and under his heading "suggest," "... (4) Ask social service worker to look into this family environment."

On March 27, 1975, Dr. Singh prepared a typewritten report upon that consultation. In part it read as follows:

"It is extremely unusual to break a solid, long bone such as the left humerus, on just by changing the child's hand (sic). This family should be investigated by first, a service worker for the environmental and social status the family lives in. I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present state, she might end up with a fractured skull or some other fractures later on in her life. I think this should, of course, be discussed and kept confidential."

Copies of Dr. Thorp's "history" and Dr. Singh's consultation report were made specifically for Dr. Jumeau. Dr. Jumeau would also have access to the hospital files and records containing handwritten

forms. A copy of Dr. Singh's report was made for Dr. Lota. I am satisfied that those copies were delivered to Dr. Jumean and Dr. Lota or to their office and were also placed in the hospital files and records relating to Kim. Those files and records were available to Dr. Jumean and Dr. Lota.

There was ample basis for that concern and suspicion. In support of that finding, I need mention only the nature of the injury, Kim's age and development at the time and the explanation or explanations therefor given by Jennifer Popen and the obvious inconsistencies therein and Jennifer Popen's nervous and apprehensive behaviour when responding to Dr. Thorp's questions.

Neither Dr. Thorp nor Dr. Singh made any report upon his or their suspicions or Kim's injuries to a children's aid society or Crown attorney.

Dr. Thorp testified that he was familiar with the provisions of section 41 of The Child Welfare Act. Hereafter in this chapter I shall call The Child Welfare Act the "Act."

I gathered from his oral testimony that he had some fear that if he were to make a report such as that required by section 41(1) of the Act he might, notwithstanding section 41(2), be sued, "by the patient's mother or the patient" in the event his "allegation" were incorrect.

Dr. Thorp's testimony was that he felt a report such as that required by section 41 of the Act should be made if the person making it "has reasonable suspicion." He said that meant that before making such a report the informant should "have followed up the background of the parents a bit." He had not made any such "follow up."

I share Dr. Thorp's view that any report made in compliance or in purported compliance with section 41 of the Act should be based on reasonable suspicion. In the words of the statute there must be "reasonable and probable cause."

I do not share his view that no such report should be made until the informant has conducted some investigation, except of course whatever may be

appropriate to support the existence of "reasonable and probable cause" for having made the report.

In my view, Dr. Thorp with his training and experience as a medical doctor and with his knowledge of the particular injury which led to Kim's hospitalization and his observation of Jennifer Popen's explanations for that injury and her nervous and apprehensive state would have been justified in making and was required to make a report pursuant to section 41 of the Act on March 22, 1975. That he did not make such a report was a breach of the statute.

I gathered that he felt that he had done all that was required of him by placing material in the hospital records and preparing a copy of the "history" for Dr. Jumean. That was not sufficient to comply with the requirements of section 41 of the Act.

I appreciate that my view is a legalistic one and the apparent harshness thereof must be mitigated by recognition of the circumstances that prevailed. Dr. Thorp merely admitted Kim to hospital through emergency procedures in the absence of Dr. Jumean and Dr. Lota who, to use Dr. Thorp's expression, was Dr. Jumean's *locum tenens*; he initiated Dr. Singh's involvement; he arranged for Kim to receive appropriate treatment for her injury and he prepared a history for Dr. Jumean which, in my view, clearly indicated his concerns and suspicions that Kim had been abused. Admittedly the written history did not contain as much detail as to his suspicion and concern and the basis therefor as did his oral testimony upon the Inquiry. But coupled with oral discussion which took place amongst the doctors it was adequate.

Dr. Lota recognized Dr. Thorp's concerns when, in preparing the formal request for Dr. Singh's consultation, she wrote, on March 25, 1975,

"?Batter (sic) baby syndrome."

Had Dr. Jumean read Dr. Thorp's "history" he too would have recognized Dr. Thorp's concern.

I am satisfied that while Dr. Thorp did not comply with the provisions of the statute that

failure was of minimal at most and probably, by reason of subsequent intervening events, was of no significance in the development of the ultimate tragedy.

In my view Dr. Singh would have been justified in making and required to make a report pursuant to section 41 of the Act.

Probably even more so than Dr. Thorp he, by his special training and experience in paediatrics, was qualified to recognize the existence of the possibility that Kim had been abused.

Dr. Singh testified that severe force or violence would be required to cause the injury to Kim's arm and that it would be impossible for the fracture to have been caused simply by changing her clothing as Jennifer Popen had mentioned to him in her explanation of the cause of Kim's injury. He said he was aware that inconsistencies in explanations for injuries are common in cases of child abuse and that Jennifer Popen had given a number of inconsistent explanations.

From his report upon his consultation it is clear his suspicions were aroused and he recorded them in the hospital records and for Dr. Jumean and Dr. Lota who Dr. Singh believed were in partnership.

Dr. Singh testified that he asked Dr. Thorp to refer the matter to a social service worker, Mr. Khattab of the hospital's staff, for investigation of the environmental and social status of the Popen family. The consultation report refers to all of this, but does not indicate Dr. Thorp's involvement in the referral to Mr. Khattab. In any event, in some way, Mr. Khattab's services were sought and obtained. Dr. Singh testified that he had not expected to receive nor did he receive any report from Mr. Khattab who, he thought, would report to Dr. Jumean and Dr. Thorp.

Dr. Singh testified that he expected Dr. Jumean or Dr. Lota as the family physician to read the consultation report and to do whatever was necessary to implement the recommendations therein.

As to the suggestion in the consultation report that the matter "be discussed and kept confidential," Dr. Singh testified that the report was a communication from him to the family physician, that the views or opinions expressed were based on only the initial examination and were merely impressions formed therefrom rather than a final diagnosis confirmed after a full investigation. He said he did not want any suggestion of his suspicion to be leaked prematurely lest the parents remove the child from hospital. He said he did not want his suspicion to be leaked to any authority, such as the police or the Society, because it was merely a suspicion and had not been confirmed.

In my view, Dr. Singh too was in breach of section 41 of the Act in that he failed to make a report as required by that section. He had information of the physical ill-treatment of Kim. Merely to prepare and deliver a report to Dr. Jumeau and Dr. Lota, with a copy for the hospital file, with reliance that the doctor receiving it would then investigate further and, if the suspicion were confirmed, make a report pursuant to the statute, is not sufficient to constitute performance of the statutory duty imposed on Dr. Singh by section 41 of the Act.

Dr. Singh testified that his view as to his duty remained unchanged after Kim's death, but added that in addition to preparing the written report to the physician he would arrange to meet the physician who referred the case to him to encourage that physician to make the report required by the statute.

In my view even that would not have fulfilled the statutory duty which lay upon Dr. Singh in March, 1975.

As I have written with reference to Dr. Thorp's position, I feel the severity of my view of Dr. Singh's failure to report the matter in March, 1975 is mitigated by the peculiar circumstances of his relationship to Kim. That relationship was limited. He did report his suspicion, but only to the family physician on whom he relied to comply with the Act. A copy was placed in the hospital file. He made certain that Kim received proper care for her physical injury. Understandably, in his oral testimony he enlarged upon his written reports, but

that enlargement was available to the family physician if it were sought. It was not sought.

Again, as I said with reference to Dr. Thorp, Dr. Singh's failure to report was of minimal, if any, significance in the development of the tragedy.

During the period of Kim's hospitalization, the area of her left shoulder and humerus was examined by X-ray on March 22 and March 25, 1975. Reports thereon were prepared over the signatures of Dr. M. F. Bennett and Dr. B. E. McCrudden, respectively. Dr. Bennett and Dr. McCrudden were associated as radiologists with the hospital. Only Dr. McCrudden testified orally upon the Inquiry.

Dr. Bennett's radiological report upon the X-ray performed March 22, 1975 merely confirmed the presence of "a slightly oblique fracture of the mid-shaft of the humerus" and Dr. McCrudden's report following the X-ray performed March 25, 1975 commented upon changes in the area since the earlier X-ray.

Dr. McCrudden testified that he did not directly treat or see Kim. I presume Dr. Bennett would have testified to similar effect.

Dr. McCrudden testified that the X-ray examination was made pursuant to a request through the Emergency Department of the hospital to take X-rays of that particular portion of Kim's body because of a suspicion there was a fracture there.

I am satisfied that during March, 1975, neither Dr. Bennett nor Dr. McCrudden knew more than that Kim's left humerus had been fractured. They knew nothing of the explanations given by Jennifer Popen nor of the suspicions of Dr. Thorp, Dr. Lota and Dr. Singh and the basis for those suspicions.

In my view therefor neither Dr. Bennett nor Dr. McCrudden had information which would justify or require them to make a report pursuant to the Act.

In vigorous cross-examination Dr. McCrudden was asked a number of theoretical questions relevant

to his perception of the role of a radiologist and the effect thereon of section 41 of the Act.

The questions were premised upon the radiologist being aware that the patient who had been X-rayed was a child who had been battered or to whom the battered child syndrome applied. It was not suggested that Dr. McCrudden was aware that Kim was such a child.

As I understood Dr. McCrudden's responses they essentially placed responsibility upon the "clinician," whom I took to be the attending physician. Dr. McCrudden's response was that if he suspected the presence of child abuse he would do as he would do in the event of any other disease process -- that is, he would call the physician and discuss it and "thence it is [the physician's] responsibility."

Dr. McCrudden expressed the view that it would be unethical for him to become involved directly with a patient who was not his patient if the attending physician did nothing about the suspected abuse of the child. He felt that would "be going over the head of a physician or one of my peers and so forth." He said he had never been confronted with such a situation and that, in practice as opposed to the theoretical situation involved in the questions, he could not tell whether or not the appropriate action was taken by the attending physician.

Dr. McCrudden expressed the view that a radiologist's responsibility would end when the attending physician has been advised of the radiologist's suspicion of child abuse and the radiologist has no reason to believe that the attending physician will not take proper and appropriate action. He said he would presume that the attending physician would comply with the requirements of the statute. In his opinion the radiologist would be required to report pursuant to the statute only if the radiologist knew that the attending physician would not comply with the statute.

Dr. McCrudden felt no obligation would lie upon the radiologist to ensure that the attending physician did take the proper and appropriate action.

In addition to his concern as to professional ethics, Dr. McCrudden had concern about legal liability in the theoretical case if the radiologist

"were the only one [to] release information of this sort initially without consulting with a family doctor."

He seemed to feel that, because the child was not the radiologist's patient, the propriety of the radiologist's making a report in compliance with the statute was somehow affected. He felt that to make any such report would be a breach of confidentiality and an improper release of information.

In elaboration upon the theoretical situation he said that in practice the radiologist would not have seen the patient or talked to the family.

As I have written, my opinion is that in the circumstances of their involvement with Kim in March, 1975 neither Dr. Bennett nor Dr. McCrudden had any responsibility to do more than he did. Neither had any obligation to make any further report pursuant to the Act.

The cross-examination of Dr. McCrudden upon the theoretical situation put to him was difficult for him. I felt he was honest and forthright in his answers. The difficulties, as I saw it, arose because he had never earlier had to put his mind to such a situation. It was a theoretical situation which, in the end, contained a combination of factors which he had not met in his practice and which, apparently in his view, were not likely to arise in practice, but which for him raised questions of legal liability and responsibility and of professional ethics.

Dr. McCrudden's responses to this series of questions seemed to contain the germ of a concept that the law or the ethics of his profession, both as to the disclosure of medical information and as to his relationship with his fellow practitioner would have the effect of preventing or inhibiting him from making a report pursuant to section 41 of the Act.

I think he is in error. I do not accept that concept. In my view the provisions of section 41 of the Act would override any concern which Dr. McCrudden had as to incurring legal liability or professional sanction as a result of making a report as required by section 41(1) of the Act, provided the making of the report was not done maliciously and provided there was reasonable and probable cause for its being made.

Dr. Woods was consulted as an orthopaedic surgeon. He did not testify upon the Inquiry. I should think he is in much the same position as Dr. Bennett and Dr. McCrudden. He would be aware of the nature of the injury, but would not likely have received any information from any source to indicate or suggest to him that Kim had been physically ill-treated. Presumably he saw and treated Kim, but at two months of age she could tell him nothing. There was no criticism of his treatment of Kim.

Thus in my view Dr. Woods was not required to do more than he did. He was not required to make any report pursuant to section 41 of the Act.

Dr. Lota was in breach of section 41 of the Act. She made no report pursuant to the statute. Clearly from what she wrote in the request for Dr. Singh's consultation she had some suspicion that Kim had been abused. While she did not testify upon the Inquiry, I can only assume that that initial suspicion was based on information given to her orally by Dr. Thorp or hospital staff or which she obtained from reading Dr. Thorp's "history" or from her personal observation of Kim and her personal contact with Kim's family. Following Dr. Singh's consultation requested by her she had available to her his report thereon.

Thus she had the initial suspicion which she recorded and that would be reinforced by her reading of Dr. Singh's report.

Dr. Singh testified that he expected she would read his report. In my view she should have read it provided it was delivered prior to Dr. Jumean's return.

Thus she would have had information that Kim was physically ill-treated and would have been required to make a report pursuant to the statute.

In my view Dr. Lota's failure to make that report would not be relieved by any of the factors which I felt mitigated my assessment of the corresponding failure by Dr. Thorp and by Dr. Singh.

Dr. Jumean was the physician to the Popen family. In Dr. Thorp's view, Dr. Lota was Dr. Jumean's *locum tenens*. In Dr. Singh's view Dr. Jumean and Dr. Lota were in partnership. Thus, particularly in Dr. Jumean's absence, Dr. Lota would have been required by the statute to make a report.

Even in the absence of any mitigation of the criticism of Dr. Lota's possible failure to comply with the statute, it is my view that that failure like the corresponding failures of Dr. Thorp and Dr. Singh, would have been of minimal, if any significance in the development of the tragedy.

There was no suggestion that, apart from her possible failure to comply with section 41 of the Act, Dr. Lota was remiss in any of her duties to Kim.

Dr. Jumean in his testimony did offer some complaint that Dr. Lota had not advised him of the particulars and circumstances of Kim's injury and hospitalization in March, 1975. I do not accept that complaint as one having any merit. It ill-behoves Dr. Jumean to make it.

Dr. Jumean did not see or treat Kim during her period of hospitalization in March, 1975. In his testimony Dr. Jumean acknowledged that copies of the history and reports prepared respectively by Dr. Thorp and Dr. Singh with reference to that event were received by his office. Dr. Jumean did not review those documents until much later.

Dr. Jumean testified that he was not aware of the concerns of Dr. Singh as to the possibility that Kim had been abused. He said he became aware of that concern when he saw Kim in June, 1975. I presume that was the visit which led to his telephone

calls to the Sarnia Police Force and The Lambton Health Unit on June 16, 1975.

That was rather surprising because Dr. Jumeau had attended Kim in April, 1975 and had arranged her admission to hospital on April 28, 1975 for treatment of a respiratory infection. He testified that he had not then reviewed any of the material in connection with Kim's injury and hospitalization in March, 1975. It would seem he was not even aware of the events in Kim's life in March, 1975.

When Dr. Jumeau was questioned as to the reason for his not having reviewed Kim's file after his return or at least when he treated her in April, 1975 and admitted her to hospital, his response was that he had arranged for Dr. Lota to take his office calls and he expected that if anything out of the ordinary had arisen she would have pointed it out to him. He testified that Dr. Lota had not advised him of the injury to Kim in March, 1975.

As indicated earlier that excuse is so feeble that it must be disdained. Dr. Jumeau had also arranged for Dr. Thorp to attend to some functions of his practice. Dr. Thorp had written a report to Dr. Jumeau. Dr. Jumeau did not look at it. Dr. Thorp arranged for a consultation by Dr. Singh. Dr. Singh wrote a report to Dr. Jumeau. Dr. Jumeau did not look at it. The hospital files and records contained copies of the reports of Dr. Thorp and Dr. Singh as well as other documents relevant to Kim's injury in March, 1975. Dr. Jumeau did not look at those hospital files and records.

Dr. Jumeau made a sad but apparently honest commentary upon the priority of his concerns when he indicated that upon his return from vacation or whatever he had reviewed the financial records of his practice more carefully with his secretary than he had reviewed the medical records of his patients.

The copy of Dr. Singh's report which was in Dr. Jumeau's file does not indicate when it was received by Dr. Jumeau or his office. I think it reasonable to suppose it was received not later than within one or two days after its preparation on March 26, 1975.

There was no evidence of the date on which Dr. Jumean returned to Sarnia.

Kim remained in hospital for about five days following her admission in April, 1975.

Dr. Jumean testified that he did not in April, 1975 make any observation that Kim had been abused. He said there were no external signs that she had been abused.

In my view, Dr. Jumean was remiss in that upon his return to Sarnia he did not review Kim's file and did not read Dr. Singh's report of March 26, 1975, which may have been in the file or among correspondence, but certainly was in Dr. Jumean's office. Kim was his patient. Surely even the review of financial matters which Dr. Jumean conducted with his secretary on his return to Sarnia would have revealed Kim's admission to hospital and perhaps even the nature of the cause for such admission. In my opinion, Dr. Jumean should have made some inquiries as to what else there might be in her file either in his office or at the hospital. He would then have seen Dr. Singh's report; then he would have been alerted to look at the hospital file and he would have seen Dr. Thorp's written history.

Dr. Jumean is not excused from responsibility even if Dr. Lota did not advise him of the incident.

Dr. Jumean compounded his failure to fulfill his obligations to Kim when he signed the document by which she was discharged from hospital on April 3, 1975. That document clearly shows the nature of Kim's injury and that Dr. Singh and Dr. Wood had been consulted. Dr. Jumean acknowledged that when he signed that form he would have had Kim's entire hospital file in front of him which would have contained Dr. Singh's report. That he did not read it constitutes no reasonable excuse for his ignorance of what was in that file. When he signed that form he in effect was endorsing what had been done by others and was certifying the accuracy of what he wrote.

I was not favourably impressed by Dr. Jumean's responses when cross-examined about that

event. He seemed to suggest that the date on which he signed the document is not indicated and could have been four or five months after the event. His entire response was:

"A. But when did I sign this report. That could have been signed about four or five months after. This has been left until after the child has left and everything. I signed it obviously when I came back. There's no date when I signed it."

By the extravagant reference to four or five months Dr. Jumeau destroyed the validity of the rationale suggested by the response. Clearly he had returned to Sarnia on or before April 28, 1975 when he saw Kim and admitted her to hospital. Even by the one statement in that response "I signed it obviously when I came back" supports the view that Dr. Jumeau signed that document on or before April 28, 1975.

Dr. Jumeau said that what he signed was merely a summary of the discharge report that would have been written by others,

"probably by Dr. Singh, Dr. Wood and Dr. Thorp...and most likely Dr. Lota."

If then Dr. Jumeau was able to summarize the discharge report, one can reasonably assume that earlier reports, such as by Dr. Singh and Dr. Thorp, were in the file and available to him at that time and formed part of the basis for his "summary of the discharge report."

That reinforces my belief that Dr. Jumeau was remiss in remaining blind to the existence of those other reports and he failed Kim.

Dr. Jumeau said he wrote in the summary of the discharge report:

"child found to have fracture of left humerus following a fall. Dr. Wood being consulted...[and]...End result of the fracture was good."

That summary contains no reference to Dr. Singh's involvement although Dr. Singh's name as one of the

doctors consulted appears on the face of the document on which Dr. Jumean was writing. One must wonder where Dr. Jumean found support for his reference to a fall. Dr. Singh's report does not mention a fall. Dr. Thorp's history does not mention a fall and indeed denies it for Dr. Thorp wrote:

"There was no history of accident."

and

"No history fall."

Dr. Jumean did not comply with the requirements of section 41(1) of the Act in March and April, 1975. The information that Kim had been abused was in his office and the hospital files in March, 1975. He should have seen it on his return to Sarnia. That return was no later than April 28, 1975. It was probably much earlier. That he chose not to read his files or the hospital files upon his return amounts to carelessness and does not excuse Dr. Jumean's failure to make the report required by the statute.

Dr. Jumean then further compounded or extended his failure to fulfill his obligations to Kim when, on April 28, 1975, he admitted her to hospital and still failed to read what was in the hospital files as well as in his own office file.

In my view it was Dr. Jumean's own loose professional procedures which resulted in his not having information that Kim had been physically ill-treated on or about March 22, 1975. He acknowledged that Dr. Singh's report did indicate to him that Dr. Singh had a concern that Kim had been abused. That report was in his office and in the hospital files on or shortly after March 27, 1975.

Again if Dr. Jumean was careless on his return to Sarnia he was equally or more so when he admitted Kim to hospital on April 28, 1975. Thus on and after April 25, 1975, Dr. Jumean failed to comply with the provisions of the statute by not making the report which he should have made as to physical ill-treatment of Kim.

Dr. Jumean did make an oral report to the Sarnia Police Force on June 16, 1975, but the testimony he gave with reference to the circumstances leading to its having been made is unsatisfactory. I have dealt with that testimony elsewhere.

He made a similar report to The Lambton Health Unit on June 16, 1975, but did not mention it in his oral testimony.

In Chapter VI I have discussed in detail the testimony relating Dr. Jumean's telephone call to the Sarnia Police Force.

I am satisfied on the balance of probabilities that Dr. Jumean saw Kim on June 6, 1975 and that he did not telephone the Sarnia Police Force until June 16, 1975.

Thus on June 6, 1975, Dr. Jumean failed to fulfill the requirements of section 41(1) of the Act. That default continued to June 16, 1975.

That default by Dr. Jumean may have been of some significance in that the bruises he observed upon Kim on June 6, 1975 probably were well along the way toward complete healing and thus were not very noticeable to Mrs. Saul and Mrs. Hoad and Police Constable Gander on June 17, 1975.

In the light of the failures of the Society from June 17, 1975 that default may not have been important, but, since it was so concurrent with the initial involvement of the Society in Kim's case, it is my view that it is of greater significance than the earlier default of other physicians and of Dr. Jumean himself.

Until now I have expressed the view that the default of each of the physicians involved, viewed separately was of minor significance in the ultimate development of Kim's tragedy. That remains my view, but that is really viewing the default of each physician as a separate instance of default. When one views collectively the defaults of the physicians whom I have criticized in this section of the report, Dr. Singh, Dr. Thorp, Dr. Lota, Dr. Jumean, the individual default of each of them becomes of greater significance.

Of all the physicians, Dr. Jumean is to be most severely criticized. He was the family doctor. He was Kim's doctor. The other doctors reported to him. Whether or not they were correct in law, they relied upon Dr. Jumean to take appropriate action upon their reports, including compliance with section 41 of the Act. Their reliance was misplaced.

Having said that it remains that, if the Society had acted adequately on Kim's behalf from June 17, 1975 onward, any injury suffered by Kim after June 17, 1975 might have been prevented. Those injuries perhaps included those Mrs. Hewitt observed in the mall and the fractured ribs revealed by X-rays taken on August 31, 1975. They certainly included the injuries leading to Kim's hospitalization on August 31, 1975 and to her death on August 11, 1976.

Chapter XXI

The Role of St. Joseph's Hospital, Sarnia, and Its Staff

In large measure the involvement of St. Joseph's Hospital and its staff corresponds to and complements the involvement of medical doctors in Kim's life.

Upon and immediately following Kim's admission to the hospital on March 22, 1975, that hospital, as represented by some of its staff, was aware of the nature of Kim's injuries and of the various explanations therefor given by Jennifer Popen. The hospital and some of its staff had available amongst the hospital's files the various documents completed in connection with Kim's admission to and her treatment in hospital, including the history prepared by Dr. Thorp and the consultation report prepared by Dr. Singh.

My use of the word "staff" includes the members of the nursing staff who attended to Kim and thus also would have access to her file and to those members of the staff who observed Kim or had any contact with her parents. It also includes nurses in a supervisory position in the area of the hospital where Kim was treated. They thus would have an opportunity to observe Kim and her parents and would receive information from other nurses more directly involved in Kim's care. They would also have had access to her hospital file as a basic source of information. It includes members of the hospital's administrative staff responsible for the maintenance of the hospital records and files relating to Kim and her injuries and treatment. It includes Mr. Khattab, employed by the hospital as a social worker to whom Kim's case was referred as a result of Dr. Singh's consultation report.

Thus the hospital and members of its staff had on or immediately after March 22, 1975 information of the physical ill-treatment of Kim and of her need for protection. Possession of that information

would have justified and required them to make a report pursuant to section 41 of The Child Welfare Act. They did not make such a report. They are therefore subject to criticism similar to that expressed with reference to the various medical doctors involved in Kim's hospitalization on and immediately after March 22, 1975.

The names of some staff members who had such information were not mentioned. Some were mentioned. They were Mr. Khattab, Mrs. Hewitt and Mrs. Mitchell, a Head Nurse. Mr. Khattab and Mrs. Hewitt testified as did Sister Rita Heenan, Executive Director of the hospital.

As I understood the testimony of Sister Rita, it was to the effect that the general policy of the hospital prior to, on and after March 22, 1975, was to make a report pursuant to the provisions of section 41(1) of The Child Welfare Act wherever and whenever suspicion of child abuse arose.

That policy was not reduced to written form. It appeared to be somewhat loose both in its scope and its implementation.

Sister Rita's broad statement was that hospital staff members were expected to comply with the requirements of the legislation and that that was the general policy of the hospital. That policy and its implementation were open to a variety of interpretations by individual members of the hospital staff. I do not think Sister Rita herself was exactly certain of the details of what she regarded as the policy of the hospital and she was not exactly certain as to its implementation in practice.

I am satisfied that there was no formal procedure whereby the hospital as a separate entity would cause any report to be made. It was left to each member of its staff to determine whether or not a report should be made. It was generally anticipated that any such report would be made only by staff of a particular stature, for example, a director of a department.

Sister Rita said it was the policy of the hospital that any employee who suspected the presence of child abuse in any case would report to the

Society. Her further testimony appeared to limit the scope of that statement. She went on to say that she "suspected" that if a nurse were suspicious of child abuse, that nurse

"would report to the Director of Nursing which is the normal route and probably it would be reported to me [Sister Rita]."

From that I sensed that Sister Rita "suspected" that the report would be made to a children's aid society or Crown attorney only if the Director of Nursing or she, Sister Rita, as the case may be saw fit.

Sister Rita did say she felt the matter would be mentioned to the supervisory personnel "more from a point of view of giving her information and maybe consulting her about the case before they may report it."

Were the discussion with supervisory personnel only for the purpose of information there could be no objection. It would simply be a report superfluous to that required by statute. The possibility of consultation and thus of either advice or, more seriously, a specific order that a report should not be made to a children's aid society or Crown attorney is objectionable. No employee should be inhibited from making a report pursuant to the statute because he or she knows that to do so would be contrary to the wishes, advice or order of someone in authority over him or her.

Sister Rita said she was content that a director of any department of the hospital or a head nurse could make such a report on behalf of the hospital. It seemed that Sister Rita anticipated that any suspicions of abuse held by employees below certain levels of authority or responsibility would be reported by such employees to their superiors. An example would be nurses reporting to the Director of Nursing, and perhaps even to Sister Rita herself, before any report was made pursuant to the legislation. Certainly Sister Rita did not say it, and indeed said the opposite, when she said it was the policy that any employee who was suspicious could make a report to a children's aid society or Crown attorney.

While I recognize the practical situation that might arise in any general hospital with its numerous employees performing various functions, having various sources of information and with various skills and training and ability to assess information, I do not think that any internal procedure such as that suggested in Sister Rita's testimony satisfies the requirements of the statute. The onus to report lies upon the individual who has the information mentioned in section 41(1) of The Child Welfare Act. It is the personal responsibility of that person.

From a practical point of view if the matter is promptly reported by senior personnel to a children's aid society or Crown attorney, the spirit, but not the letter, of the legislation would seem to be fulfilled. I think the employee who has the information is justified in making and is obliged to make the report directly to a children's aid society or Crown attorney.

He or she cannot make a report to another, whether or not that other is a supervisor, and leave it to the discretion of that other as to whether the report will be made to a children's aid society or Crown attorney. As well, if the report is made directly by the employee who has or claims to have the information on which the suspicion of child abuse is based, the possibility of error in or omission from communication of the report to a children's aid society or Crown attorney is minimized.

An example of that possibility was shown in the testimony upon the Inquiry. There was the alleged error in or omission from the telling by Police Constable Gander to the Society of Dr. Jumeau's oral report to Staff Sergeant Allan of the Sarnia Police Force on June 16, 1975.

The procedure which Sister Rita seemed to regard as normal would apparently permit the more senior employee to decide whether or not the report should be passed to a children's aid society or Crown attorney. I do not think the legislation contemplates or permits any such review and assessment and, perhaps, the rejection or withholding of one employee's suspicion of abuse. If the employee has the information and is not acting maliciously or

without reasonable and probable cause, that employee should and must make the report directly to a children's aid society or Crown attorney. To do otherwise is to fail to comply with the statute.

When asked as to whether she felt that the making of any such report by a member of the hospital's staff in respect of a child who was a patient in that hospital would contravene the provision of section 48 of Regulation 729 made pursuant to The Public Hospital Act and which prohibited anyone from removing, inspecting or receiving information from a medical record maintained by the hospital, Sister Rita replied that she saw no problem. Her view was that if the employee had the knowledge it would not be necessary for the employee to use the medical record with reference to the patient in making the report. She seemed to assume, as an example, that such knowledge could be gained by the employee observing the patient or having contact with the patient's family without having recourse to the medical records of the patient. I think Sister Rita's view is correct.

Sister Rita seemed to feel that while hospital staff were obliged to comply with the provisions of the statute, no such report should be made by hospital personnel unless, as a matter of courtesy, the medical doctor handling the case was advised of the intent of the hospital staff member to make the report. She went on to say that it became a matter of personal judgement by the staff member as to whether the comments or opinions of the medical doctor would inhibit the staff member from making the report required by the legislation.

That view may be logically or theoretically correct, but, as will be seen from my comments upon Mrs. Hewitt's testimony, in practice, nurses appear, almost instinctively from their training and experience, to regard such reference to the medical doctor as being more than a matter of courtesy. To Mrs. Hewitt it was a reference to the doctor, intended to relieve her of responsibility to pursue the matter further and to give to the doctor the opportunity to make the report to a children's aid society or Crown attorney or to decline to make it as the doctor saw fit.

I note too that Dr. Bates referred to this in his testimony when he said that a dilemma for hospitals and nurses is that nurses are trained to accept and obey the instructions of the medical doctors under whom they are working. He said there is a developing trend for nurses to recognize their responsibility to report and to do so by reporting to their own nursing supervisors who may report to the medical director of the hospital or directly to a children's aid society or Crown attorney.

In my view, as I have said, even that trend and method of reporting by nurses does not satisfy the provisions of the statute.

Sister Rita said that Mr. Khattab was one employee of the hospital she would regard and accept as being able to make a report pursuant to section 41(1) of The Child Welfare Act without reference to anyone else within the hospital. She felt he was knowledgeable as to child abuse and as to the statutory duty to report. She said his duties included an obligation to deal with any case of child abuse which came to his attention. She acknowledged that the hospital held out to medical doctors practicing within the hospital that Mr. Khattab was knowledgeable of such matters.

I am satisfied that when Mr. Khattab presented himself to the hospital for employment he held himself out as a trained and experienced social worker. I am equally satisfied that Sister Rita, representative of the hospital's administration, assumed that he, as such a social worker, was knowledgeable of child abuse and of the provisions of The Child Welfare Act, including the provisions of section 41(1). His employment by the hospital began in December, 1974. He said his employment marked the beginning of the hospital's Department of Social Services.

Reference to the term "social worker" raises the issue as to what that term means. The testimony of Dr. Turner indicates that the term may be applied to persons having greatly varied training, skills, experience and responsibility.

Regulations made under The Child Welfare Act contains a definition of the term. That

definition is in section 1(e) of Regulation 86. That definition is related to the duties which a person is performing combined with the qualifications set forth in section 13 of that Regulation which requires each children's aid society to classify its "social workers" according to the classifications set forth therein. Excerpts from that Regulation are contained in Schedule 2-B of the Report.

Other statutes and regulations thereunder contain definitions of the term applicable to matters affected thereby.

Dr. Turner testified, and I accept, that there is not, in Ontario, legislation restricting the use of the term. He said that in the public's mind the term is applied to anyone carrying out functions such as performed by Mrs. Saul and Mrs. Hoad on June 17, 1975.

Dr. Turner's testimony was that he and many others in the field of social work were concerned by what they conceive to be a too loose usage of the definition or term "social worker." He said his own view was that the term should be applied in a more restricted manner.

I feel that Sister Rita and the hospital expected that Mr. Khattab would be knowledgeable in the field of child abuse. That was a reasonable expectation based upon his statements as to his qualifications.

While the portions of Dr. Turner's testimony which I am about to mention were directed to the periods of time surrounding the June 17, 1975 and August 31, 1975 incidents in Kim's life, they would seem to be equally applicable to the period surrounding the March 22, 1975 incident and Mr. Khattab's involvement at that time.

Dr. Turner testified that on the basis of what was known to the Society in June, 1975, even the most basic social work practice would have required the Society to make a full assessment of the situation and of the parents and to arrive at certain decisions. He envisaged that that would include a psycho-social history of the family. He indicated that a qualified social worker should have done that.

I gather Dr. Turner regarded the task as one of routinely assembling information and then assessing it and reaching decisions on the basis thereof.

If that were his opinion as to what the Society should have done in June, 1975, it would seem that all the more would that sort of investigation and assessment be required of any qualified social worker to whom the case was referred in March, 1975.

His opinion as to appropriate action by the Society in June, 1975 was based upon what was then known to the Society, an oral complaint, perhaps anonymous, to the police that Kim was the victim of abuse, a visit to and examination of Kim which did not disclose any particularly serious injury but which did disclose elements of concern to the Society's workers sufficient to merit further attention.

In March, 1975 the case was referred to a social worker by a doctor who had noted such a serious injury and was so suspicious of the possible presence of child abuse that he specifically requested the social worker to investigate "the environmental and social status the family lives in." The presence of Dr. Thorp's history and Dr. Singh's consultation report and other documents in the hospital files, expressing concern or suspicion of child abuse, would enhance the need for the sort of investigation and assessment suggested by Dr. Turner.

That was the very sort of investigation and assessment that Dr. Singh requested and expected. Dr. Singh made a reasonable request and had a reasonable expectation of a social worker serving a general hospital, its medical staff and its patients. Mr. Khattab did not respond satisfactorily to the request and did not satisfactorily fulfill what was expected of him.

The hospital reasonably expected that Mr. Khattab was qualified to complete such investigation and assessment. On his own testimony he was not. If he was so qualified he did not fulfill his duties as he should have.

In his testimony, Mr. Khattab said with reference to his involvement in Kim's case in March, 1975:

"This was my first experience truly in my life about child abuse."

Thus another name is added to the list of those who were assigned to supervise some aspect of Kim's care and who professed to have had no prior experience with the phenomenon of child abuse. They included Mrs. Kirby, Mrs. Lo, Mrs. Maughan, Mr. Brouwer and Mr. Khattab. Mr. Khattab, like Mrs. Lo and Mrs. Maughan, had begun his placement or employment in the particular position in December, 1974, a very short time before becoming involved in Kim's care.

It is sad that so many inexperienced people were directly responsible for Kim's care. I would think that such a conjunction of inexperienced personnel in any one case is unusual. In Kim's case it was an important factor in the tragedy of her life and death.

The presence and effect of Mr. Khattab's inexperience and lack of knowledge were emphasized by his testimony. It was certainly startling. Presumably in a defensive gesture he testified, immediately after the sentence I have quoted above:

"To me, I do not believe it especially the first time because I came from a culture who have never heard of it."

In that sentence "it" stood for "child abuse" and "the first time" was Kim's case in March, 1975. He continued:

"I did not feel that this happens that there is a father or a mother who will abuse their child. I didn't believe it."

With that as a basic premise from which to begin his investigation, Mr. Khattab was not qualified to conduct the investigation which Dr. Singh requested.

Having heard Dr. Bates' testimony as to the presence of the phenomenon of child abuse in all parts of the world, I reject Mr. Khattab's suggestion that child abuse was unheard of in the "culture" from which he came. I accept Dr. Bates' testimony that child abuse is perpetrated in all countries, but different cultures do have different standards as to the treatment of children. In one country a particular physical act done by a parent to a child might be regarded as merely an acceptable method of disciplining a child. In another country the same physical treatment of the child would not be acceptable, but would be regarded as an abuse of the child.

It is inconceivable to me that the infliction of injuries such as Kim suffered would be acceptable in any country or culture.

At another point in his testimony relative to the period about March 22, 1975, Mr. Khattab said:

"...so she [Kim] was about two months old. The matter which makes one suspicious that a child at that age will be punished."

In that same area he said that Jennifer Popen

"seemed to me very innocent the first time and I believed her."

He accepted Jennifer Popen's explanation of how Kim was injured and that was the end of his investigation. He did not even speak to Annals Popen about it.

Dr. Bates in his testimony, which I accept as authoritative, said the fact that Kim, at about six to eight weeks of age, suffered a broken arm

"should immediately bring to one's mind the possibility of physical abuse."

Dr. Bates made that statement on the basis only of the nature of the injury and the age of the child and without reference to any of the other circumstances of which Mr. Khattab was or could have been aware from the hospital file. That possibility did come to the minds of Dr. Thorp and Dr. Singh. Mr. Khattab through ignorance or wilfulness chose to reject the

possibility on the basis of Jennifer Popen's explanation and without further inquiry.

As I have noted earlier, Dr. Bates testified that infants between their dates of birth and their third birthdays are among a group he chose to call "high risk kids." Thus, if Mr. Khattab thought, as his testimony would indicate he did, that no one could abuse a two month old child he was wrong. He arrived at that conclusion through ignorance or wilful disregard of information known at least to knowledgeable persons working in the area of child abuse.

In my view, Mr. Khattab's testimony, rather than protecting him from criticism, exposes him to criticism. Clearly he approached the references of Kim's case to him with the predetermined position that she had not been physically abused. He had that belief notwithstanding his having read Dr. Singh's consultation report. He had read that report before embarking upon the investigation of "the environmental and social status the family lives in" as recommended by Dr. Singh. In reading that report he must have seen Dr. Singh's expression of strong suspicion that Kim had been abused and was in need of protection to prevent a recurrence of abuse.

Despite having read Dr. Singh's report Mr. Khattab professed disbelief of the possibility of abuse. It took a great deal of self-confidence, indeed too much, for Mr. Khattab admittedly or allegedly, on his own testimony, untrained and inexperienced in the field of child abuse, to disbelieve the possibility of abuse suggested in the written report of a consultant of Dr. Singh's stature, education, training and experience in paediatrics and child abuse.

I have spoken of Mr. Khattab's self-confidence which enabled him to deal so cavalierly with Dr. Singh's expressed concerns and opinions. It utterly escapes me that one who, by his own testimony, was completely ignorant of the phenomenon of child abuse could take upon himself the authority to dismiss out-of-hand Dr. Singh's concerns and to dismiss them without reference to consultation with anyone, not even Dr. Singh.

Mr. Khattab simply accepted Jennifer Popen's "story." He could not believe a parent could abuse a child of that age; so without further inquiry he closed the file. He did not even bother to report to Dr. Singh or to Dr. Jumeau or to place any memorandum in the hospital's files to indicate his conclusion and the bases therefor and particularly his basic belief that a parent could not abuse such a young child.

In fairness to Mr. Khattab, I do recognize that investigation of abuse situations may require skills that social workers, social workers in the true sense, do not possess. They are not necessarily trained or experienced in investigative techniques. That stated it must also be repeated he did not really try to investigate and he sought no assistance or advice from persons, including Dr. Singh, who he knew or should have known had particular knowledge and expertise in the area.

So far I have mentioned only that part of his testimony in which Mr. Khattab denied knowledge of the phenomenon of child abuse. His testimony proceeded to another series of statements which startled me.

His academic qualifications as stated by him in his testimony were Bachelor of Arts in Social Work from the Institute of Social Services in Egypt, Master of Theology from the University of Alazhar of Egypt and Master of Arts in Sociology from the University of Alberta. He testified that, apart from completing a thesis, he had met all of the requirements for the degree of Doctor of Philosophy in Sociology from the University of Waterloo.

He testified that in the four-year course leading to his degree of Bachelor of Arts in Social Work there was no mention of battered children. He said the three-year course leading to his degree of Master of Arts in Sociology did not touch upon child abuse or the battered child syndrome. He said the formal courses he took toward the degree of Doctor of Philosophy in Sociology did not contain anything about the battered child.

He said his life experience and work prior to joining the staff of St. Joseph's Hospital, Sarnia

had not brought him into contact with families served by or involved with a children's aid society.

He said he was the only social worker employed by the hospital. He said he set up a programme of social work for the hospital. He said his predecessor, while she worked for the hospital as a social worker held a degree in science and was not a social worker. His employment involved work with a variety of people, including alcoholics, elderly people and persons in nursing homes and homes for the aged. His work involved a variety of functions relating to the discharge of patients from hospital. As noted by me earlier, he denied any knowledge of child abuse. However he did not refuse to accept the assignment of Kim's case by Dr. Singh in March, 1975 and in September, 1975, nor did he advise Dr. Singh or anyone of the deficiencies in his knowledge and skills which he stated in his testimony upon the Inquiry.

Mr. Khattab said that when he began his employment with the hospital he had no information or knowledge concerning the battered child syndrome, had not seen any reference to it in any books on sociology, and would not even know where to look to learn something about it. He varied that last answer to indicate, without elaboration as to where that might be, he knew where to look

"but it was not my speciality originally, so I did not care to look up something which is not in my speciality."

That Mr. Khattab would deliberately and voluntarily limit the scope of his knowledge of the field in which he was employed is startling. That just is not an acceptable attitude for a professional person. Dr. Turner particularly, in his testimony, stressed the importance of persons engaged in the field of social work keeping themselves informed and currently informed as to developments in that field. I accept that that is a basic responsibility of any social worker no matter how broad or limited might be the application of that term.

On the basis of Dr. Turner's evidence, I am satisfied that, currently at least, even if not at the time Mr. Khattab was attending the various

courses he described, courses leading to qualification as a social worker do contain substantial and important portions dealing with child abuse or the battered child syndrome or whatever similar term might be applied.

While it seems unbelievable that Mr. Khattab had never heard or seen any reference to child abuse or battered child syndrome, nonetheless, he held himself out as a social worker to the hospital and others whom he met in connection with that employment. That he was a social worker was the basis of his employment by the hospital. Thus in my view it was incumbent upon him to have skills and knowledge currently required by persons employed as social workers. Mr. Khattab chose not to do that. He failed the hospital. Thus he failed Kim.

Mr. Khattab in possession of the information he had was in my view required by The Child Welfare Act to report the matter to a children's aid society or Crown attorney. He chose not to. He was in breach of the statute and remiss in his duty to Kim.

In March, 1975 members of the nursing staff of the hospital, including Mrs. Hewitt who testified and Mrs. Mitchell, a head nurse who was mentioned by name in testimony, were aware of Kim's injuries and of some or all of the various explanations therefor advanced by Jennifer Popen. The members of the nursing staff who were responsible for Kim's care in hospital and the nursing supervisors and other overseeing that care had access to and might reasonably have been expected to read the hospital file and medical record relative to Kim, including Dr. Thorp's history and Dr. Singh's consultation report with the expressed suspicion of abuse. Those staff members made no report to a children's aid society or Crown attorney pursuant to The Child Welfare Act. They were in breach of that statute and remiss in their duty to Kim.

In my view Mr. Khattab's failure to fulfill the task assigned to him in Dr. Singh's reference of Kim's case to him might very well have been of signal importance. Kim was only two months old. This was the first injury to her detected by or known to any medical doctor or social agency. The Society was not

aware of any reason to be concerned about her welfare. If Mr. Khattab had been a qualified social worker with the skills and abilities which might reasonably be expected to be possessed by one employed as he was and if Mr. Khattab had adequately and fully conducted the investigation suggested by Dr. Singh and if Mr. Khattab had reported to Dr. Singh or to Dr. Jumean or to Sister Rita upon the results of that investigation and his assessment of the information assembled by him, others, notably the Society, having responsibility for Kim's protection from ill-treatment would surely have been advised and might well have become involved at once. Then, hopefully, but not necessarily from what is known of the inadequacies of the Society, the ultimate tragedy might have been avoided.

When I express confidence that if Mr. Khattab had carried out an adequate investigation and reported thereon the Society would have been advised, I am assuming that he would have learned some of the particulars of Jennifer Popen's background and earlier life and her variety of stories such as to raise doubts as to her credibility. I assume further that then, with Mr. Khattab's report upon his investigation and Dr. Singh's expression of suspicion of abuse, someone, the hospital or Dr. Singh or Dr. Jumean or someone "covering" for Dr. Jumean, would have reported to a children's aid society or Crown attorney as required by The Child Welfare Act.

Because of the failure of the Society properly to fulfill its role and function on and after June 17, 1975, all of which is dealt with elsewhere in the Report, the simple failure of hospital personnel to make a report to a children's aid society or Crown attorney on or immediately after March 22, 1975, and apart from Mr. Khattab's failure to investigate and find and report upon information which would be of significance, does not appear to have been a decisive factor in the tragedy. Had the Society on and after June 17, 1975 properly investigated and assessed the situation, even then beginning the investigation requested by Dr. Singh in March, 1975, hopefully, Kim would have been protected from the more serious injuries later in 1975 and 1976 and, ultimately, from those which caused her death in August, 1976.

Apart from the failure of Mr. Khattab to comply with Dr. Singh's request that he investigate the situation and apart from the failure of Mr. Khattab and others in the employ of the hospital on or about March 22, 1975 to report the matter pursuant to The Child Welfare Act, no substantial and valid criticism of the hospital or its staff was expressed to or noted by me.

Kim's admission to and confinement in hospital in April, 1975 for treatment of a respiratory ailment, would give no cause to hospital staff to make any report to a children's aid society or Crown attorney. Despite Dr. Jumeau's testimony as to having observed that Kim had black eyes the hospital's record contain no reference to that injury.

When Kim was presented and admitted to hospital on August 31, 1975, the nurses and staff conducted themselves in Kim's best interests. They ensured her protection. They ensured that she remained in the hospital, a place of safety, notwithstanding Jennifer Popen's stated desire to remove Kim, and they, with the Sarnia Police Force, arranged for the intervention of the Society when Kim's safety appeared to be threatened.

In submissions made following the completion of testimony upon the Inquiry it was suggested that the hospital and its staff were to be criticized because of the lapse of time between 1:25 a.m. on August 31, 1975 when Jennifer Popen brought Kim to the hospital and about 3:15 p.m. on the same day when the Society were notified by telephone.

On the surface that suggestion would seem to be reasonable. About fourteen hours had passed. So one must look at the circumstances. It was 1:25 o'clock on Sunday morning, August 31, 1975, the day before Labour Day, virtually in the middle of the night in the middle of a long weekend. Presumably hospital staff knew the general deployment of Society personnel, that on nights and weekends Society offices were closed and only a limited number of Society staff were "on call." The accuracy of that presumption is not material to my conclusion. Examination and assessment of Kim and her injuries were being completed. Even after Mrs. Dick's arrival, X-ray examinations of Kim had not been

completed. Kim was in the hospital, originally in the Emergency Department but then as an admitted patient, she was in a place of safety. She was being examined, assessed, treated and protected, all in a quite adequate fashion. Until the afternoon of that day no effort or desire to remove Kim from hospital was made or stated. When that desire was made known to the hospital, the Sarnia Police Force and the Society were notified and responded.

In the light of those circumstances the criticism of the hospital and its staff inherent in the suggestion by counsel lacks substance and validity. The passage of time from 1:25 a.m. until about 3:15 p.m. had no effect upon Kim's care or well-being. Even if the Society or Crown Attorney had been notified at 1:25 a.m. anyone on behalf of the Society or Crown Attorney then attending at the hospital could have accomplished no more than was accomplished at and after 3:15 p.m. Kim remained in hospital. When her protection was threatened her continued safety was secured by the hospital staff and Sarnia Police Force advising the Society who, through Mrs. Dick, acted to obtain *de facto* custody of Kim and then retired physically to await the opening of the Society office two days later on September 2, 1975. There was no suggestion by counsel for the Society that anyone attending the hospital on behalf of the Society at any earlier time on August 31 would have acted otherwise or would have accomplished anything more. There was no suggestion that the passage of time from 1:25 a.m. to 3:15 p.m. in any way impeded the Society in whatever it was required to do to fulfill its obligations.

In my view the actions of the hospital personnel on August 31, 1975 were reasonable, proper and effective. They brought about a good result. They did not impede anyone else from proper performance of any duty.

Chapter XXII

The Role of the Lambton Health Unit

The Lambton Health Unit was established under The Public Health Act R.S.O. 1970 chapter 377. For ease of reference in this Chapter I shall call it simply the "Health Unit." Its members are appointed by the Lieutenant Governor in Council, the Municipal Council of The County of Lambton and the Municipal Council of the City of Sarnia. It serves the City of Sarnia and the County of Lambton.

In 1973 the Health Unit, pursuant to the legislation and regulations made thereunder, appointed Dr. Lucy Duncan to be the Medical Officer of Health for the Health Unit. The Health Unit appointed Elizabeth Kuly to be a public health nurse.

Dr. Duncan and Mrs. Kuly testified upon the Inquiry. I relied substantially upon their testimony when writing earlier Chapters of the Report to set forth the contact which the Health Unit had with Kim and her family.

The Health Unit had its initial contact with the Popen family prior to Kim's birth. On May 22, 1974 the Health Unit received a laboratory report from St. Joseph's Hospital in Sarnia. It indicated that Jennifer Popen had a parasitic infestation. Dr. Duncan assigned a public health nurse to visit the Popen home. The purpose of that visit was to ascertain if anyone in the household was engaged in a food handling occupation. That nurse reported, in part, that Jennifer Popen was young, pregnant and suffering from severe morning sickness.

On July 14, 1974 the Health Unit received from the Ministry of Health of the Province of Ontario notification of that condition of Jennifer Popen. That required the Health Unit to maintain surveillance of Jennifer Popen.

Dr. Duncan assigned Mrs. Kuly to visit Jennifer Popen in her home. Mrs. Kuly understood that, *inter alia*, she was to counsel Jennifer Popen upon nutrition and pre-natal care. Mrs. Kuly visited Jennifer Popen on occasions beginning August 21, 1974 and continuing until August 10, 1976.

Mrs. Kuly presented her notes with reference to her visits. They were filed as an exhibit upon the Inquiry. One prepared in August, 1974 was, in part:

"....Would like to go to prenatal (sic) classes in Sept/74. Shy girl."

Another, prepared in February, 1975, after Kim's birth, was, in part:

"....Did not go to prenatal (sic) classes."

During the visit in August, 1974, Mrs. Kuly had counselled Jennifer Popen on matters of nutrition and general pre-natal care. When Jennifer Popen had said she would like to go to pre-natal classes Mrs. Kuly had given her information about those classes and how to join them.

It is not surprising that Mrs. Kuly had no special concern about conditions in the Popen home. The home was neat and clean. Jennifer Popen was over her earlier nausea and her choice of food was good. Jennifer Popen gave the impression of interest in what Mrs. Kuly offered.

But, as in other instances, Jennifer Popen did not translate into any action her professed interest in and desire to attend the pre-natal classes. She had told Mrs. Kuly what she felt Mrs. Kuly wanted to hear.

While Jennifer Popen was confined to hospital for Kim's birth in January, 1975 she was visited by another public health nurse of the Health Unit. That nurse recommended to Dr. Duncan that an early home visit by a public health nurse would be helpful. Dr. Duncan accepted the recommendation. Nothing in the records of the Health Unit indicated the reason for such a visit, but Dr. Duncan testified that, on general principles of public health, the

visit was desirable because of Jennifer Popen's age, which was believed to be seventeen.

Accordingly, after Kim's birth, on January 11, 1975, Mrs. Kuly visited the Popen home in February, 1975. That was simply a routine visit, a "new baby visit." Mrs. Kuly spoke with Jennifer Popen to discuss general baby care, feeding and immunization and also Jennifer Popen's own care. Mrs. Kuly asked Jennifer Popen to call the Health Unit if any problem arose.

In all of this time Mrs. Kuly observed nothing which caused her any concern for Kim's safety or health.

On June 16, 1975 Dr. Jumeau telephoned Dr. Duncan to report that he had examined Kim. He had noted lacerations of her lip and multiple bruising. There was some suspicion that Jennifer Popen had abused Kim. Dr. Jumeau spoke of Annals Popen beating Jennifer Popen who then beat Kim. He had advised the Sarnia Police Force. He called the Health Unit to obtain "public health follow-up visiting."

Dr. Duncan testified that based on that telephone conversation she had information that Kim had been physically abused and she did not doubt it.

Dr. Duncan did not immediately contact the Society because Dr. Jumeau had said he had contacted the police who later informed the Health Unit that the Society, accompanied by the police, could find no sign of abuse to Kim. Dr. Duncan went on to acknowledge

"I suppose I should have called the Children's Aid as well."

I agree.

Dr. Duncan testified that the role of the Health Unit was to provide health education to all who ask for it or appear to need it. Cases are referred to the Health Unit from many sources. Those sources include doctors, hospitals, police and the Society.

Dr. Duncan said that the Health Unit did not undertake supervision of any home to ensure compliance with acceptable standards of care. She said that if supervision of a home seemed to be necessary, presumably for the well-being of a child or children therein, the Health Unit would advise the Society of the situation and request that supervision be undertaken by the Society.

If the Health Unit referred a case to the Society it assumed that the Society would thereafter accept responsibility for the family and child.

But the Health Unit would not advise the Society of every home in which children were living and in respect of which the Health Unit felt its services were needed. An example of such a home would be one wherein a child failed to thrive, because of the mother's need for education or counselling in matters of nutrition or feeding, but where it appeared the situation could be corrected by education of the mother by the Health Unit and by the mother obtaining medical advice if required.

Dr. Duncan said that, if the public health nurse believed a child were ill, the nurse would ensure that the child received medical attention. If it appeared that the child had been abused or deliberately neglected, the nurse would refer the case to the Society.

In all of this Dr. Duncan denied that the Health Unit assumed responsibility for the care of a child. She said that responsibility lay on the parents.

There was no testimony upon the Inquiry to suggest that Dr. Duncan misunderstood the duties and powers of the Health Unit and its personnel, including herself as Medical Officer of Health.

From my examination of The Public Health Act and the regulations made thereunder it would appear that, insofar as neglect, abuse and ill-treatment of children are concerned, the Health Unit and its staff had no greater powers or duties than any other citizen not given specific powers and duties under The Child Welfare Act.

It would appear that Dr. Duncan was correct in her assertion in testimony that the Health Unit was not in a position to require that Jennifer Popen and Annals Popen or either or them permit Mrs. Kuly or anyone else to examine Kim. She was also correct in her assertion that Jennifer Popen and Annals Popen could have denied Mrs. Kuly permission to enter their home.

It would seem however that Mrs. Kuly, and perhaps Dr. Duncan, equated "require" to "request." Dr. Duncan, speaking of Mrs. Kuly and her visit to the Popen home on June 23, 1975, said that part of the reason for the visit was to check on Kim's condition, but

"...she lacked the authority to waken the child and ask it to be undressed, she was helpless to do anything further on that visit."

That latter is not correct. In law, Mrs. Kuly could have asked permission to see and examine Kim. If permission were refused, she then could not insist upon seeing and examining Kim. But it may very well have been that refusal of permission would have created enough concern in Mrs. Kuly's mind to cause her to pursue the matter further with the Society.

That the Society's personnel had examined Kim on June 17, 1975 and had seen no sign of abuse and that Jennifer Popen had said the Society was visiting regularly, would seem to mitigate any criticism of Mrs. Kuly and the Health Unit for not asking permission to see and examine Kim on June 23, 1975.

However, under section 41 of The Child Welfare Act Dr. Duncan, having received apparently reliable information from Dr. Jumeau as to some injuries suffered by Kim and the suspicion as to the cause thereof, was required to report that information to a children's aid society or Crown attorney.

Neither Dr. Duncan nor Mrs. Kuly nor anyone of the staff of the Health Unit made such a report. That failure to report was not a significant factor in the ultimate tragedy.

Mrs. Kuly testified that she had telephoned to the Morality Division of the Sarnia Police Force to inquire about the involvement of the police and the Society in the matter. No one was available to answer her query, but later in the day the police visited her to advise her that Mrs. Saul and the police had visited Kim between June 16 and June 20, 1975 and had found no evidence of abuse, although Kim's parents were angry and upset about that visit. The police advised Mrs. Kuly that the Society would visit the Popen home within a week. They told Mrs. Kuly of Kim's earlier broken arm.

As a result, on June 23, 1975, Mrs. Kuly telephoned the Society to learn its involvement in the case. She was told, she thought by Mrs. Dick, that the case had been assigned to Mr. Carter, a member of the long term care team. Because of her knowledge of the Popen family she was encouraged to visit their home. She did make such a visit on June 23, 1975.

Dr. Duncan testified that Mrs. Kuly was instructed to visit the Popen home on June 23, 1975 even though both the Society and the police had said they found no indication of abuse.

Mrs. Kuly said that the suggestion from the Society that she visit the Popen home was in the hope that, since the Health Unit staff usually were able to establish good relationships with their clients Jennifer Popen and Annals Popen might trust Mrs. Kuly to talk with her about any problem that might arise. A secondary hope was that Mrs. Kuly might see Kim.

During that visit on June 23, 1975 Mrs. Kuly spoke with both Annals Popen and Jennifer Popen. They denied that Kim had been abused. They told her Kim had broken her arm when she fell from a chair because a nephew had loosened the straps of the chair. As to Dr. Jumean's telephone report to the Sarnia Police Force, they claimed that an aunt, who wanted Kim, had "misreported" to Dr. Jumean.

It is not clear from Mrs. Kuly's testimony whether or not she knew that Dr. Jumean had seen Kim before he telephoned the police. From the absence of any reaction by her to the allegation of the matter

being "misreported" to Dr. Jumean, I infer she did not have that knowledge.

On that visit Mrs. Kuly saw Kim. Her description of that part of the visit was:

"A. I did see her briefly as I went out. The child was sleeping at the time and as we were going out, I darted into the bedroom which was on the way out and had a look at her. I only saw the face and head and I didn't notice anything at that point in time."

Mrs. Kuly said her arrangement with the Society was that she would contact them if she saw anything significant in relation to Kim's care. She observed nothing which she felt was significant. She saw no evidence that Kim had been abused. She saw no indication that the family were ready for or needed any help. She saw nothing to cause her to be concerned for Kim's welfare; so she did not telephone Mr. Carter or the Society.

After June 23, 1975 the Health Unit had no specific contact with the Popen family until September 12, 1975. On that date Jennifer Popen came to the Health Unit's office. Mrs. Kuly was not in. Jennifer Popen indicated that she wanted the Health Unit to write a letter which she might give to her lawyer to indicate that she took good care of Kim. Jennifer Popen told the Health Unit employee then, and Mrs. Kuly later by telephone, that the Society had removed Kim from her home. In that latter conversation Mrs. Kuly denied Jennifer Popen's request because, on the basis of the brief time she had spent in the Popen home, she could not vouch for Jennifer Popen's care of Kim.

It would seem that Dr. Duncan became aware of Jennifer Popen's request to Mrs. Kuly and Mrs. Kuly's concerns about it. She instructed Mrs. Kuly to refuse the request. Dr. Duncan said she took that position because, on the basis of the content of Dr. Jumean's telephone conversation to the effect that Jennifer Popen beat Kim after Annals Popen, when drunk, beat Jennifer Popen. Dr. Duncan felt that the Health Unit could not truthfully write a letter such as Jennifer Popen wanted. Dr. Duncan also felt that

it was not a responsibility of the Health Unit to write such a letter.

I am satisfied as to the propriety of the Health Unit's refusal of Jennifer Popen's request. My only concern is that there should have been any consideration given to the request. Dr. Duncan was absolutely correct to say that the Health Unit could not "truthfully" write such a letter.

Later in her testimony relevant to this incident, Dr. Duncan said that, again in retrospect, she felt she had erred in merely denying Jennifer Popen's request. She said that if the situation were to arise again she would be "more aggressive" and would write a letter expressing her opinion that the child should not be returned and would so inform the Society if her opinion were requested.

Mrs. Kuly testified that after that last telephone conversation she spoke with Mr. Carter by telephone on September 12, 1975. He advised her of Kim's hospitalization on August 31, 1975 and her subsequent discharge from hospital to the care of the Society. He told Mrs. Kuly that Jennifer Popen and Annals Popen would be separately charged with child abuse. Mr. Carter told Mrs. Kuly that Kim was in the care of the Society who would supervise that care. He did not ask Mrs. Kuly to visit the Popen family.

On September 17, 1975 Mrs. Kuly visited the Popen home to try to maintain a working relationship with the family and to respond to any indication that the family might need help. Neither Jennifer Popen nor Annals Popen gave any such indication.

Mrs. Kuly testified that that visit was not a "matter of routine." She was looking ahead to the possibility that Kim would be returned to her home. Mrs. Kuly wanted to maintain communication so as to enable her to help at the time of Kim's return.

Mrs. Kuly received a subpoena to attend Court on October 29, 1975 to testify on behalf of Annals Popen and Jennifer Popen. She attended Court then and from time to time until, on February 18, 1976, Mr. Higgins advised her that the matter was postponed indefinitely and her attendance was not required.

On July 5, 1976, Karie, Kim's sibling, was born. A public health nurse employed by the Health Unit visited Jennifer Popen while she was in hospital for that birth. On August 10, 1976 Mrs. Kuly made a routine "new baby visit" to the Popen home. By that time Mrs. Kuly was aware, but she did not know how she had become aware, that Kim had been returned to her parents' home.

The Society had not advised Mrs. Kuly of Kim's return to her parents' home. The Society had not sought any assistance from the Health Unit after Kim's return.

During that visit Mrs. Kuly hoped to see Kim. Mrs. Kuly was aware "it was known to be a possible child abuse case" and thought it would be helpful for her to observe and be able to report to the Society if she saw anything untoward. She was aware that

"the family was in the care of Children's Aid and under their very close supervision".

The accuracy of Mrs. Kuly's awareness is suspect. Surely by August 10, 1976, after the proceedings in the Provincial Court (Family Division) of The County of Lambton in the spring of 1976, it would be clear that Kim had been physically ill-treated and was a child in need of protection. The identity of her abuser had not been established although in June, 1975 Mrs. Kuly was aware of the contents of Dr. Jumeau's conversation with Dr. Duncan on June 16, 1975. Similarly, one must query her assessment of the supervision provided by the Society as "very close." That latter was based, in part at least, on Jennifer Popen's statements to Mrs. Kuly as to the frequency of visits by the Society.

Jennifer Popen was not a reliable source of information. However the frequency of visits alone is not a measure of the closeness of supervision. From her responses to counsel I gather Mrs. Kuly was not aware of the manner in which the Society was supervising Kim's care.

Mrs. Kuly asked where Kim was. Jennifer Popen said Kim was sleeping, having her afternoon nap.

Mrs. Kuly did not ask to see Kim. She knew the Society was supervising the family and she entrusted Kim's safety to them. She felt that any request to see Kim, in the circumstances, might be construed as "a threatening thing." Jennifer Popen had been describing how the Society's worker had been following her very closely. Mrs. Kuly did not want to jeopardize

"a fairly good relationship with a family that allows us to accomplish what we do."

Mrs. Kuly was asked if she felt she had built some relationship with Jennifer Popen. Her response was:

"A. In a way, she wasn't overly hostile to me and she did discuss things with me, but really only what she wanted me to know.

Q. Did you sense that at the time or are you saying that in hindsight?

A. I'm saying that in hindsight. She could appear very open and talked very openly some visits. Other visits she was quite reticent, reserved..."

Thus, during that visit of August 10, 1976, Jennifer Popen employed two tactics I have commented upon elsewhere. Like others before her who sought to see Kim, Mrs. Kuly was denied that opportunity. The denial was polite and apparently reasonable, but it was effective. As she had done with others, Mrs. Lo and Mrs. Maughan are two, Jennifer Popen spoke of the actions of another person. Jennifer Popen had spoken to Mrs. Maughan about Mrs. Lo, to Mrs. Lo about Mrs. Maughan and now Jennifer Popen spoke to Mrs. Kuly again about Mrs. Lo.

Mrs. Kuly forthrightly acknowledged that the opinion expressed in her testimony last quoted was formed in hindsight. Like others, Mrs. Kuly had not correctly assessed the situation as it developed.

During that visit of August 10, 1976 Mrs. Kuly observed nothing that gave her concern for the welfare or safety of Kim or the younger child Karie. Jennifer Popen told Mrs. Kuly that

"Kim was doing very well and was well physically."

Mrs. Kuly said she had no reason to disbelieve Jennifer Popen.

The care of the infant Karie is not strictly within the purview of this Inquiry, but one element of that care impresses me as being relevant to Kim's care. That element was the actions of various people in respect of Karie in the days immediately following Kim's death. Those actions seem to be indicative of a condition which had an influence upon the handling of Kim's case and the ultimate tragedy of her death.

The Health Unit, as represented by Dr. Duncan, took a strong position. They and she are to be commended for doing so.

On August 12, 1976, having somehow learned of Kim's death which occurred during the early evening of August 11, 1976, Dr. Duncan telephoned the Society and spoke with Mrs. Harvey. Dr. Duncan wanted to know what arrangements had been made to care for Karie. She was concerned about him being in a home where a child had died.

When asked why she had telephoned Mrs. Harvey her response was:

"A. Because of concern for the baby. The baby, a five week baby was in a home where we knew that the mother had beaten a five month baby previously and that that baby had subsequently died. It's true I had no evidence that Karie had been abused or there was no way to guess that he might be abused, but it was, it seemed a reasonable action to suggest to Mrs. Harvey that Mrs. Harvey must be concerned about the safety of the second child in the home."

And later she added:

"...There is no doubt in my mind that I was worried about the safety of a baby, a five week baby, in a home where a child had died the day before, when I knew that the mother had beaten the child and the father had been charged with abuse. That was my sole reason for phoning Mrs. Harvey, to discuss with her her feelings about the baby Karie being left in that home. No evidence, no evidence except that a need to act."

Mrs. Harvey told Dr. Duncan that the landlord was caring for Karie. She told Dr. Duncan that she too was "uncomfortable" about the situation, but she felt that there were not "actually sufficient grounds" to enable the Society to apprehend Karie under The Child Welfare Act. Dr. Duncan recalled that Mrs. Harvey said there was no evidence that Jennifer Popen had ever abused Karie and therefore "it seemed doubtful whether it was right to remove" Karie from her. Dr. Duncan understood Mrs. Harvey to equate the word "right" with "legal right" or authority under the statute.

When Dr. Duncan suggested that Mrs. Harvey speak with the Crown Attorney, Mrs. Harvey said she had done so.

Dr. Duncan testified that she:

"...assured Mrs. Harvey that in spite of the apparent lack of any real reason to do so, that I would be prepared to state that in my opinion the baby, Karie, was in danger and in need of protection..."

In the end Mrs. Harvey agreed to remove Karie from the family home and Dr. Duncan understood that was effected the next day.

The connection which this has with Kim's care is that this was another instance of at least an error in judgement by Mrs. Harvey. It demonstrated her lack of correct understanding of the provisions of The Child Welfare Act. It demonstrated her lack of knowledge of acceptable practices in the field of child welfare.

It was precisely that combination of circumstances, an error of judgement, a lack of correct understanding of legislation and a lack of knowledge of acceptable practice, which led to Kim's death.

But for Dr. Duncan's forthright discussion with Mrs. Harvey, those three elements might have again come into conjunction with equally tragic results.

Dr. Duncan testified as to the relationship between the Health Unit and the Society. Prior to Kim's death that relationship was informal. The communications between the two agencies, to use a word which seemed to be common in the vocabulary of many of the witnesses, was by telephone. Dr. Duncan expected that the family health record maintained by the Health Unit would contain a notation with reference to any telephone conversation.

There was no procedure within the Health Unit whereby, as a matter of course, the staff of the Health Unit would automatically and immediately telephone to the Society to advise that agency of any communication to the Health Unit of any suspicion of child abuse. An example of such a communication was Dr. Jumeau's telephone call in June, 1975.

Dr. Duncan spoke of an arrangement or understanding between the two agencies to the effect that when a child was taken into custody by the Society or when the Society was visiting the home regularly the Health Unit's staff would cease visiting that family's home. That was because of a belief that too many social workers might become involved. The Health Unit relied upon the Society.

The testimony upon the Inquiry lends some credence to that belief. In Kim's lifetime several agencies and individuals were involved with her family. They included the Society, the Sarnia Police Force, the Probation Service of the Ministry of Correctional Services, the Health Unit, the hospital, medical doctors, Alcoholics Anonymous, the Parent Effectiveness Training Course and the Provincial Court (Family Division) of the County of Lambton.

The testimony of Mrs. Lo, Mrs. Maughan and Mrs. Kuly demonstrated how Jennifer Popen was able to

speak to each of those workers to express criticism of one or more of the others. The reaction of any one of them to any such criticism could easily have made it more difficult for the object of that criticism to work effectively with the Popen family.

Each of those workers was, during Kim's life, unaware that Jennifer Popen had expressed any negative criticism of that worker's performance of her role. In a sense each worker and her role were insulated from the others and their roles.

When asked if there was "any great push" between the Health Unit and the Society to exchange information or make or maintain liaison, Dr. Duncan responded:

"A. We mostly ran our separate courses..."

Dr. Duncan testified that in June, 1975 the Health Unit was aware that the Society was involved with the Popen family. Police officers had told the Health Unit that the Society would be visiting the home regularly.

Dr. Duncan testified that:

"...in hindsight I would say that our [the Health Unit] communications with the Children's Aid Society at that time [1975] were unsatisfactory."

When asked to describe in what way the communications were unsatisfactory she replied:

"A. We were unable to discover why Kim Anne Popen was returned to her home. We would have liked further communications, we would have liked to have received reports on what the Children's Aid workers observed when they visited the home. We would have liked closer communication. This is hindsight."

Dr. Duncan's testimony, admittedly expressing an opinion formed in hindsight, did not suggest that any steps were taken by the personnel of the Health Unit before Kim's death to overcome any of the matters which were later perceived as being "unsatisfactory."

In another area of her testimony, while speaking of the establishment and maintenance of a child abuse team composed of personnel from various agencies or authorities, Dr. Duncan said:

"...Our conclusion on looking at the events prior to Kim's death was that there was a lack of communication between all the health workers in our area.....none of us really had sat down together to discuss this family."

While the portion of Dr. Duncan's testimony which I have reproduced contains reference only to "health workers," she spoke as well of police officers and the probation office.

In 1978, after Kim's death, the Health Unit itself prepared and implemented procedures with reference to cases of abuse or suspected abuse of children. Dr. Duncan said that, although public health nurses are not trained in the examination of children, the Health Unit prepared a form "which details exactly" how a public health nurse is to examine a child in such a case. The staff of the nursing division of the Health Unit

"must record in writing all communications to the Children's Aid Society."

"Lines of communication" were established with reference to the referral of cases to the Society or to the child abuse team. A public health nurse employed by the Health Unit was appointed to attend case conferences at the Society and to maintain liaison between the two agencies.

The procedures and guidelines developed and implemented by the Health Unit were more extensive than set forth orally by Dr. Duncan in her testimony. Copies of the two documents were filed as part of an exhibit upon the Inquiry. They are reproduced as Schedule 2-I to the report.

Because of the absence of any authority to enable a public health nurse to examine or even see a child, Dr. Duncan requested that orders made in the Provincial Court (Family Division) of the County of Lambton, in appropriate cases, contain a provision to

authorize the public health nurse to examine the child. She said that such a provision was contained

"in several court orders which we have received recently [1978]."

Dr. Duncan recognized particularly the limitations of the ability of the staff of the Society to detect signs of abuse of children. Public health nurses were also limited in those abilities. She recommended that children in cases of abuse or suspected abuse be examined regularly by a medical doctor.

In another Chapter of the Report I review recommendations made by witnesses upon the Inquiry. I include there other recommendations made by Dr. Duncan. I have mentioned this specific recommendation by Dr. Duncan because, on December 16, 1977, she wrote to Judge George Thomson, Associate Deputy Minister, Children's Services, of the Ministry of Community and Social Services. Her letter contained a recommendation similar to that which I have just mentioned.

Perhaps one brief comment made by Dr. Duncan in her testimony is the sad summation of the failure of a multitude of persons and organizations to protect Kim. She said:

"...In retrospect, if we had known as much as is now known about Mrs. Popen's background, all the agencies involved would have probably behaved differently."

The Health Unit did not report to a children's aid society or Crown attorney immediately upon receiving Dr. Jumeau's telephone call on June 16, 1975. The Society were informed of and actively involved in the matter on June 17, 1975 and by June 23, 1975 Mrs. Kuly was in touch with the Society and visited the home by arrangement with the Society.

Mrs. Kuly did not examine Kim at any time, nor did she ask permission to do so. Mrs. Kuly was not, by law, entitled to require Jennifer Popen and Annals Popen to permit her to examine Kim. She did not seek permission. Presumably she wanted to maintain a good relationship with the Popen family. She

understood that the Society was actively involved in the case. She was entitled to assume that the visits by the Society's personnel would include observation and examination of Kim.

The Health Unit did not advise the Society of Jennifer Popen's request in September, 1975 for a letter commending her care of Kim. In retrospect, Dr. Duncan would now advise the Society of such a request and of her denial of it, with a letter of opinion if requested by the Society. The Society was fully aware of Mrs. Kuly's visit in June, 1975 and yet did not follow up on that to ask her for an opinion or even for her observations. The subpoena to Mrs. Kuly in the fall of 1975 was issued on behalf of Jennifer Popen and Annals Popen.

Dr. Duncan spoke of poor communication between the Health Unit and the Society. In my view the Society was clearly the agency primarily responsible from June, 1975 for the management of Kim's case. The primary responsibility lay upon the Society to establish and maintain communication between the Society and others involved or interested in the case.

In light of the Society being the agency primarily responsible for Kim's case it was reasonable for the Health Unit to rely upon the Society to accept responsibility for visits to and supervision of the Popen home. In keeping with the informal arrangement between the agencies the Health Unit discontinued visits to the home because of the presence of the Society.

In my view the Health Unit bears little responsibility for Kim's tragedy. In all of the circumstances it seems likely that the tragedy would not have been averted even if, in the areas where I have expressed criticism of the Health Unit, its personnel had acted so as not to merit that criticism.

Chapter XXIII

The Role of the Office of the Crown Attorney for the County of Lambton

For the purposes of this Chapter I shall call the Office of the Crown Attorney for the County of Lambton simply the "Office of the Crown Attorney." Andrew Matthew Lang was the incumbent of that Office at all times relevant to this Report.

To assist readers of the Report, extracts from The Crown Attorneys Act are reproduced in Schedule 2-C to the Report.

The Office of the Crown Attorney became involved in the events of Kim's life when the Sarnia Police Force began its investigation following Kim's admission to hospital on August 31, 1975.

In September, 1975, members of the Sarnia Police Force consulted Mr. Lang with reference to the case and their investigation. They sought his advice as to what charge or charges, if any, could or should be laid as a result of the injuries suffered by Kim on or about August 31, 1975 and on earlier occasions.

As a result of those consultations, Mr. Lang's advice was that both Jennifer Popen and Annals Popen be charged with an offence under section 40(1) of The Child Welfare Act in that they did fail to protect Kim. The Sarnia Police Force accepted Mr. Lang's advice. The appropriate information to institute the proceedings against the parents jointly was signed by Police Constable Wyville on October 16, 1975. That information alleged that the offence was committed between January 11, 1975, the date of Kim's birth, and August 31, 1975.

For brevity I shall hereafter call The Child Welfare Act simply the "Act."

Thus it would seem that any evidence relating to any failure to protect Kim at any time

during her lifetime to August 31, 1975 would have been relevant and, subject to the usual procedural and evidentiary requirements, would have been admissible upon the trial. This would have included, if appropriate, evidence concerning her prior medical history, hospital admissions and injuries, such as those observed by Mrs. Hewitt in the mall and those healing fractures of the ribs revealed upon the X-ray photographs examined by Dr. McCrudden.

Mr. Lang's testimony upon the Inquiry was that his advice to the Sarnia Police Force was to lay the charge under the Act rather than to lay a charge of causing bodily harm or of assault causing bodily harm under section 245(2) of the Criminal Code. He said that advice was based on his opinion that, since Kim was unable to testify, it would be difficult or impossible to meet the onus and standard of proof beyond a reasonable doubt as to the identity of whoever had caused Kim's various injuries. He felt that the identity of that person or those persons was an essential ingredient or element of a charge laid under the Criminal Code. He felt that in the case of a charge against the parents under section 40 of the Act the only elements to be proven were that Kim was in or under the care, custody or control of her parents and had suffered injuries from which it could be argued that the parents had unlawfully failed to protect her. He felt that in the case of a charge against the parents under the Act the identity of the person or persons causing the injuries was not an element which would have to be proven to support a finding of guilt.

The advice given by Mr. Lang was sound. His appreciation of the matter as presented to him was reasonable.

Unfortunately, when summonses were issued and served upon Jennifer Popen and Annals Popen, they were returnable on October 30, 1975 before "the Provincial Judge" without reference to whether the Provincial Judge was sitting in the Criminal Division or Family Division of the Provincial Court of the County of Lambton.

The case was placed on the list of cases to be heard by the Provincial Judge sitting in the

Provincial Court (Criminal Division) of the County of Lambton.

An endorsement upon the information indicates that on October 30, 1975, Mr. Higgins appeared for the parents and the matter was adjourned to November 13, 1975. It is not clear from the documents who appeared for the Crown, but Mr. Lang testified, and I accept, that he appeared on both October 30 and November 13, 1975. Mr. Higgins' testimony, which I accept, was that he made representations to the Provincial Judge sitting in the Provincial Court (Criminal Division) of the County of Lambton whereby he disputed the jurisdiction of any provincial judge sitting in provincial court (criminal division) to deal with such a matter. He relied on section 20(1)(d) of the Act which provides that in Part II of the Act, which contains section 40, "judge" means a provincial judge presiding in a provincial court (family division). Mr. Higgins testified that the matter was adjourned because the provincial judge sitting in the Provincial Court (Criminal Division) of the County of Lambton was surprised by the submission. There was no evidence as to the position taken by Mr. Lang.

It would seem that Mr. Higgins too was somewhat surprised by the submission he made on October 30, 1975. On October 29, 1975, when speaking to his own request for adjournment of the Society's application for custody of Kim, he based his request, in part, upon the existence of the section 40 of the Act charge to be heard "in another court" and his view that a decision should be reached on it before the Society's application was heard.

When it was suggested that the Society's application might be heard on January 19, 1976, Mr. Higgins continued his statement to the Court as follows:

"Why don't you set that day with this perhaps in mind--that myself and Mr. Carter or Mrs. Harvey can discuss this matter. By that time the other charges will have been dealt with. I think they will, because I think they are ready to deal with cases in December. Then they might be able to tell

how long it would take, and they can come back and say it won't take a whole day."

Clearly the words "the other charges" referred to the charge under section 40 of the Act and the words "they are ready to deal with cases in December" referred to the Provincial Court (Criminal Division) of the County of Lambton.

Thus, even on October 29, 1975, unless he was seeking to obfuscate the matter, Mr. Higgins apparently expected the trial of the charge under section 40 of the Act to be held in the Provincial Court (Criminal Division) of the County of Lambton.

On November 13, 1975, the matter was transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Provincial Court (Family Division) of the County of Lambton which hereafter in this Chapter of the Report shall be called simply the "Court."

The evidence is not clear as to who was responsible for the matter being placed on the list of cases for hearing in the Provincial Court (Criminal Division) of the County of Lambton. There was no evidence of any discussion between Mr. Lang and members of the Sarnia Police Force as to the venue of any trial resulting from the charge under the Act. Presumably Mr. Lang was not consulted as to that particular and did not put his mind to it. Nonetheless it would seem he or his office must share with the Sarnia Police Force responsibility for the error.

The error as to the court in which the trial would be held did lead to some confusion and to delay. One such delay was the adjournment of the hearing of the Society's application from October 29, 1975 to January 19, 1976, a delay of almost three months. Thus that confusion and delay affected not only the trial of the charge under section 40 of the Act against the parents, but, indirectly, also the hearing of the application of the Society for custody of Kim pursuant to the Act. Thus too all that might flow from the decision in either matter, including long-range plans for Kim's care, was similarly delayed.

After the transfer to the Court, Jennifer Popen and Annals Popen appeared in Court on November 17, 1975 and pleas of not guilty were entered on behalf of both of them. The matter was adjourned to January 19, 1976 for trial. The transcript does not indicate the names of counsel appearing with reference to the charge under section 40 of the Act, but Mr. Higgins was present in Court to represent the parents upon the Society's application under the Act.

It should be noted that the Society's application for custody of Kim was first presented in Court on September 8, 1975. Hearing of that application was then adjourned until October 29, 1975 and, subsequently, to January 19, 1976.

Thus, by January 19, 1976 both matters, that of the charge against the parents under section 40 of the Act and that of the Society's application for custody, were scheduled for hearing in the Court on the same day. Presumably all parties to each of the proceedings were aware of the existence of the other concurrent but essentially separate proceeding.

The portion of the transcript of the Court proceedings on January 19, 1976 relevant to the charge under section 40 of the Act against the parents is brief. It is merely:

"Further adjourned to February 23, 1977 (sic) due to inavailability (sic) this date of witness, Dr. Singh."

There is no indication as to the identity of counsel or the presence of parties and witnesses.

It would seem that this transcript is in error as to the date to which the matter was adjourned. A notation on the back of the Information, presumably made by the Court Clerk, shows the hearing to be adjourned to "25 Feb, 76". From other testimony it would seem that that notation is correct.

The transcript in respect of the Society's application for custody is more extensive. Mr. Higgins appeared for the parents. Mrs. Harvey represented the Society. In summary, Mrs. Harvey sought an adjournment because of Dr. Singh's absence, but indicated a desire to present all other witnesses

before the hearing was adjourned. Mr. Higgins opposed any interruption of the hearing, but did not oppose the adjournment of the entire hearing.

That latter transcript indicates that hearing was adjourned to February 25, 1976.

Thus both matters were to be heard in the Court on the same day.

From the confidential brief prepared by Police Constable Wyville of the Sarnia Police Force for use by the Crown Attorney upon the trial of the charge under section 40 of the Act, I am satisfied that Dr. Singh was an essential witness to prove the full nature of Kim's injuries which were seen on August 31, 1975 and her earlier injuries seen in March, 1975. No explanation was given for the failure to ensure Dr. Singh's attendance. Responsibility for that failure as it relates to the charge under section 40 of the Act lies on one or both of the Office of the Crown Attorney and the Sarnia Police Force. Responsibility for that failure as it relates to the Society's application lies on the Society.

I bear in mind the testimony of various witnesses as to the desirability that proceedings relating to the welfare, care and custody of children be conducted expeditiously. There was further testimony as to the length of time which had already expired since the matter of Kim's care came again to the attention of the Sarnia Police Force on August 31, 1975 and initially to the attention of Mr. Lang in early September, 1975. That also applied even to the period from October 16, 1975 when Police Constable Wyville signed the information alleging the offence. There were the very lengthy adjournments that seemed invariably to be required in the Court. In the light of all that it is unfortunate and inexcusable that whoever was responsible for the attendance of witnesses failed in that responsibility.

That failure, by the Office of the Crown Attorney or by the Sarnia Police Force on the one matter and by the Society on the other, resulted in a further delay of more than five weeks. The Office of the Crown Attorney, responsible for the presentation of the one matter in Court, must bear at least some

responsibility for that failure and for whatever flowed from it. In saying that I recognize that the Office of the Crown Attorney followed a practice rather common in Ontario whereby such offices rely upon the police force having jurisdiction in the area to secure the attendance of witnesses upon trials proceeding in provincial court.

As will be noted elsewhere in this Report, the Society is to be similarly criticized because whoever of its staff were responsible for the attendance of witnesses upon the hearing of its application failed to fulfill that responsibility.

The failure of the Office of the Crown Attorney and the Sarnia Police Force is all the more glaring since the adjournment from November 17, 1975 to January 19, 1976 was "for trial." The Crown Attorney and the Sarnia Police Force should have known that the trial was to proceed that day and should have been prepared for trial. One can only speculate as to what might have occurred on January 19, 1976 if Mr. Higgins had vigorously opposed the adjournment.

There was no evidence to indicate when the Office of the Crown Attorney learned that Dr. Singh would not attend Court on January 19, 1976. Mr. Higgins apparently was not informed of that until a few minutes before the case was called on January 19, 1976. Police Constable Wyville told him only then that Dr. Singh was away.

It would seem that Dr. Singh, Police Constable Wyville and other witnesses were present in Court on October 29, 1975 when hearing of the Society's application was adjourned to January 19, 1976 and, at the request of the Society, was marked as peremptory.

There is nothing to indicate that Dr. Singh was present on November 13, 1975 when the charge under section 40 of the Act was transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Court or on November 17, 1975 when that matter was adjourned to January 19, 1976 for trial. It may be that everyone in Court on November 17, 1975 assumed that when, on October 29, 1975, January 19, 1976 had been selected and fixed as a

peremptory date for hearing of the Society's application the attendance of all necessary witnesses, including Dr. Singh, would have been arranged or ensured. No one was entitled to make such an assumption. Someone should have inquired.

After January 19, 1976 the next involvement of the Office of the Crown Attorney in these matters occurred on or about February 10, 1976. Mr. Lang received a letter from Mr. Higgins dated February 10, 1976. In that letter Mr. Higgins wrote:

"I am instructed by my clients that...Mr. Popen will acknowledge responsibility for injuries to the child".

The letter went on to note that the trial had been adjourned to February 25, 1976, but Mr. Higgins asked that

"it be advanced to the morning of February 11, 1976 or to 1:30 p.m. on Monday, February 23rd."

The letter concluded:

"I feel this matter can be dealt with briefly as proposed."

Mr. Lang testified that on receipt of the letter he telephoned Mr. Higgins to advise him that no one from the Crown Attorney's office could be available for trial on February 11, 1976.

Mr. Lang testified that at some time he did speak with Mr. Higgins about the portion of the letter which said that Annals Popen would acknowledge responsibility for the injuries to Kim. He testified that it became clear to him at some point that Mr. Higgins was proposing that Annals Popen would enter a plea of guilty to the charge under section 40 of the Act and that the similar charge against Jennifer Popen would be withdrawn.

He said he was not informed as to the manner in which Annals Popen's responsibility for Kim's injury would be acknowledged in Court. He said he understood it would be an acceptance of full responsibility for all of the injuries described by

the doctors at the end of August, 1975. He denied that he had been informed that, in explanation of Kim's injuries, evidence would be tendered to show she had been struck by a slipper thrown by Annals Popen. He did not regard that as a sufficient explanation for the injuries and had he been told of it he would have queried it. I should note that the transcripts of the proceedings in Court which were produced upon the Inquiry do not indicate that any such explanation was offered in Court. Jennifer Popen did make reference to that alleged incident in her testimony upon the Inquiry. She said she had mentioned it to Annals Popen. Even she acknowledged upon the Inquiry that a thrown slipper could not have caused the injuries which Kim suffered.

Mr. Lang testified as to his "clear distinct recollection" that, when he had formed that opinion of Mr. Higgins' proposal, he telephoned Staff Sergeant Allan of the Sarnia Police Force to advise him of the proposal, to obtain Staff Sergeant Allan's reaction to it and to suggest that the position of the Society to that proposal should be determined.

He said he was interested in the position of the Society because, as he read Mr. Higgins' letter, the proposal seemed to "link" the charge under section 40 of the Act with the Society's application for custody of Kim. He said that he understood Mr. Higgins to mean that the hearings of both matters would be moved from February 25 to February 23, 1976. Mr. Higgins' letter certainly is open to that interpretation for it speaks of "this matter" in the singular and refers to both the charge under section 40 of the Act and the application by the Society.

Mr. Lang said that if he had understood that both hearings were not to be held on the same day, he would have inquired as to the reason for their being separated. In his view both should ordinarily have been heard on the same day, but he did not feel that his Office should have any direct responsibility for the conduct of the application for wardship. He felt that would be so even if it had arisen out of a decision by the Judge hearing the charge under section 40 of the Act to apply subsection 3 of section 40 and to proceed as if the child had been brought before him as a child

apparently in need of protection. Mr. Lang felt that such an application would require more background information than would ordinarily be available to the Crown Attorney proceeding upon a charge under section 40(1) of the Act. He felt the Society would then be required, under section 34 of the Act, to appear upon the application and perhaps to call upon the police and the Crown Attorney for information they might have obtained but which would not be admissible as evidence upon the charge under section 40(1) of the Act.

As I understood the thrust of his testimony, Mr. Lang said he wanted to learn the position of the Society. That was because he felt that an improper result would be achieved if, in respect of the charge under section 40 of the Act, he were to accept Annals Popen's plea and withdraw the charge against Jennifer Popen and, in respect of its application for custody, the Society were to seek to place on Jennifer Popen responsibility for Kim's injuries.

Mr. Lang continued his testimony to say that very shortly after that Staff Sergeant Allan "came back to me and said well, they're agreeable to this disposition." Mr. Lang testified that he had the impression that, in using the word "they," Staff Sergeant Allan was referring to the Society.

Staff Sergeant Allan was unable to recall those telephone conversations with Mr. Lang, but did recall at least one conversation with Mr. Lang about the specific issue of whether, in the light of a guilty plea by Annals Popen, the charge against Jennifer Popen should be withdrawn. Staff Sergeant Allan did not recall having contacted the Society about that issue, but went on to say:

"...I have great respect for Mr. Lang and if he told me to do something I would either have it done by whoever was looking after the case or somebody would do it."

Staff Sergeant Allan did express the view that "we," I presume he meant the Society and the Sarnia Police Force, had no alternative but to accept the proposal and that that would have been communicated to the Society by whoever contacted the

Society. He said that Police Constable Wyville was looking after the case and that the proposal would have been discussed with Police Constable Wyville.

Police Constable Wyville was not able to recall that he made any contact with the Society specifically to discuss the proposal inherent in Mr. Higgins' letter and subsequent discussion with Mr. Lang. He did say he had numerous contacts with the Society and Mr. Carter at about that time and might have discussed the proposal with him. He said he had been informed of the proposal, but could not recall discussing it with the Society. He had testified that the Society would not have been directly involved in the discussion between Mr. Lang and Mr. Higgins.

Both Mr. Higgins and Staff Sergeant Allan in their testimony, in different ways and with reference to different details, expressed confidence in Mr. Lang's recollection of the events. I share their high regard for Mr. Lang. I too accept his testimony without any reservation except in the area of some relatively minor details which I specifically mention.

I am satisfied that the course of the proceedings on and after February 10, 1976 was determined by Mr. Lang's belief that acceptance of Mr. Higgins' proposal was in the best interests of the administration of justice and would achieve an appropriate result. It would seem that in forming that belief Mr. Lang lost sight of his original opinion as to the charge to be laid and as to the elements of that charge.

That course of the proceedings was also determined by Mr. Lang's further belief that both the Sarnia Police Force and the Society concurred in his acceptance of the proposal and his proceeding accordingly.

I am satisfied that both of those beliefs were well-founded even though, as I indicate elsewhere, it is clear, on the evidence upon the Inquiry and perhaps even on the information available to the Office of the Crown Attorney, the Sarnia Police Force and the Society in February, 1976, that Jennifer Popen was guilty at least equally with Annals Popen

of having failed to protect Kim during the period mentioned in the information. Of the three, only the Office of the Crown Attorney was not aware of the suspicion or suggestion that Jennifer Popen was directly responsible for Kim's injuries. Both the Society and the Sarnia Police Force were aware of such a suspicion or suggestion.

All of these various discussions must have been completed by February 16, 1976 for on that date an employee of Mr. Higgins' wrote to Mr. Lang to "advise" him that the matter had been brought forward to February 23, 1976 at 1:30 p.m.

Mr. Lang continued his testimony to state that he instructed the Assistant Crown Attorney, Mr. Hibberd, to appear on February 23, 1976. He said that Mr. Hibberd's presentation of the case and consent to the withdrawal of the charge against Jennifer Popen were entirely in accordance with those instructions. Mr. Lang said he had no further direct involvement with the matter after that instruction to Mr. Hibberd, but he said he was kept informed of the proceedings.

It is interesting to note that in February 1976, Mr. Hibberd was the only full-time Assistant Crown Attorney on Mr. Lang's staff. Two barristers in private practice in Sarnia were authorized and retained by Mr. Lang on a part-time per diem basis to appear as Assistant Crown Attorneys.

An undated memorandum in the Crown Attorney's file with reference to Kim's case indicates some of the pressures upon Mr. Lang in the performance of his office.

Mr. Hibberd testified that a secretary in the Crown Attorney's Office informed him that that memorandum was prepared on February 23, 1976. He said that the secretary informed him that she was having difficulty getting someone to appear in the Court for Kim's case that day. He said that at that time the Office of the Crown Attorney did not supply a Crown Attorney to the Court on a regular basis but "only as and when required" by the Judge through the court administrator or if the Crown Attorney, having been advised of a case pending in the Court, felt it was necessary for him to attend, as in the case of

charges of assault upon a spouse contrary to the Criminal Code. He opined that that gave rise to the "panic" on that day.

That memorandum indicates that the trial was "set for February 23, 1976, 1:30," that a Crown Attorney was required, that Mr. Higgins had advised that the trial should take only about fifteen minutes and Mr. Lang should be asked as to whether one of the part-time Assistant Crown Attorneys should be engaged or "can we work Mr. Hibberd in before Prov. C. [Provincial Court] at 2:00."

On Mr. Hibberd's evidence he was "worked in." He had no recollection that he had any knowledge of the matter until his actual appearance in Court. Mr. Lang's testimony indicated he had spoken with Mr. Hibberd

"at approximately 4:30 one day...and I am aware of what transpired in the Family Court the next day..."

Those words would seem to indicate that the discussion between Mr. Lang and Mr. Hibberd occurred the day before the trial on February 23, 1976. February 23, 1976 was a Monday. I doubt that the discussion occurred on Sunday, February 22, 1976. Mr. Hibberd had no recollection of it whatsoever.

Mr. Hibberd's testimony was that on February 23, 1976 he was required to appear as Crown Attorney in the Provincial Court (Criminal Division) of the County of Lambton in the morning and in the afternoon. He said Mr. Lang was engaged in the Supreme Court of Ontario. He said that in February, 1976:

"It wasn't uncommon to have a hundred items in the remand docket and pleas of guilty and anything up to seven trials."

He testified that, at that time, Mondays were particularly busy days. When asked what he would have done on February 23, 1976, he replied:

"Go without lunch is what I would have done."

He said the Provincial Court (Criminal Division) of the County of Lambton adjourned at about 1:00 p.m. and was to resume at 2:00 p.m.

At another point in his testimony, when asked if he had reviewed the Act, particularly section 40, prior to appearing in Court his response was:

"I can't recall whether I did or not...what I would expect happened is that I came downstairs from the Criminal Court on the third floor and was handed this and went practically uninterrupted into the Family Court."

Mr. Hibberd had no recollection of his instructions or of his presentation of the case. His testimony was based upon his reconstruction of events. His reconstruction in turn was based upon his usual practice and the various documents presented as exhibits upon the Inquiry. He felt he would have been told that Annals Popen was going to plead guilty.

By the analogies drawn in his testimony, I feel he probably approached the trial with an underlying belief that one of the elements of the offence charged against Annals Popen and Jennifer Popen was that one or both of them had caused Kim's injuries and that, in the face of Annals Popen's plea of guilty, the Crown Attorney would have some difficulty in proving that element in the case against Jennifer Popen if she were to plead "not guilty."

Mr. Hibberd testified that, in retrospect, he felt that proof simply that the person charged failed to protect Kim would be sufficient to support a finding of guilt upon the charge under section 40 of the Act, but that at the time and in the circumstances of the trial he must have been satisfied that Annals Popen had "committed these acts."

He said that from his reading of the brief prepared by the Sarnia Police Force for the Crown Attorney it would be very difficult to say whether Annals Popen or Jennifer Popen had abused Kim.

In his testimony Mr. Hibberd indicated a lack of knowledge as to his right, when appearing as Crown Attorney, to call witnesses to testify, even as to the nature or extent of injuries or as to sentence, following a plea of guilty. In any event he must have been content with the summary he read into the trial proceedings.

In cross-examination Mr. Hibberd testified that in retrospect it would be advisable for doctors and medical personnel to attend and testify at a trial even if a plea of guilty had been indicated. He also felt that the Society's personnel familiar with the case should be present although the investigating police officer is the one upon whom the Crown Attorney relies for information.

In part that arose from Mr. Hibberd's lack of recollection as to who were present at the trial. He presumed that in the circumstances no witnesses other than the investigating officer were present. He presumed they had been subpoenaed for February 25, 1976 and that, with the arrangement for plea on February 23, 1976, the witnesses were informed they need not attend.

Those presumptions were not entirely correct. The transcript of the proceedings on February 23, 1976 indicate that at least Mrs. Harvey of the Society was present. Other competent witnesses may have been present, but their attendance was not noted nor would I expect that it would be noted.

Mr. Hibberd, in his testimony, said that in most cases proceeding in provincial courts the Office of the Crown Attorney had little time to prepare for trial. He spoke of the obligation upon the Crown Attorney to appear in the Provincial Court (Criminal Division) of the County of Lambton in the City of Sarnia and elsewhere in the County of Lambton and in the Supreme Court of Ontario and in the County Court of the County of Lambton. He described it as "a tremendous caseload" for Mr. Lang and himself. He felt the office required another full-time Assistant Crown Attorney.

Mr. Hibberd testified that it was "almost an impossibility" for him to review the file of each

case before appearing in provincial court to present that case on behalf of the Crown. If possible the night before, he did try to "skim through them as you would a deck of cards." He went on to say:

"If I see a charge that I don't recognize and haven't dealt with before, I'll read it and take my Criminal Code with me and try and find out the elements of the offence that I'm going to have to prove."

Even if Mr. Lang's recollection that he instructed Mr. Hibberd at about "4:30 p.m. one day" is correct it would seem that Mr. Hibberd was unable even to do that minimal amount of preparation for trial. Even for a plea of guilty counsel appearing for the Crown should be aware of the elements of the offence charged.

For my present purposes I am prepared to accept Mr. Lang's recollection as being essentially accurate. That does not take away from the basic thrust of Mr. Hibberd's testimony as to lack of opportunity to prepare a serious case for trial in provincial court.

Mr. Hibberd's testimony was that:

"Quite often we don't get the briefs until we go into court on the very day."

From notations made upon the brief he expressed the opinion that in this instance the brief was made available to the Crown Attorney's office on or before October 30, 1975 and thereafter remained in that office's files to be brought forward from time to time as required for appearances in court.

Mr. Hibberd testified that "it would be a physical impossibility" before trial in provincial court to review each file with the police officer responsible for the case in that file. He said such reviews were made of files in respect of which the trials were to be held in the County Court of the County of Lambton or in the Supreme Court of Ontario. He said that was because such trials usually were of longer duration than those in provincial court and it was necessary to complete a number of preparatory and procedural steps, including preparation of the

indictment and subpoenas for witnesses. He said the latter particularly would involve consultation with the police officer to determine what witnesses were required and available for trial. That in turn would require the police officer to advise the Crown Attorney of what the testimony of each witness was expected to be, and perhaps to obtain from some witnesses and deliver to the Crown Attorney statements signed by such witnesses. It might also require the police officer to deliver to the Crown Attorney copies of documents, such as medical reports and hospital records.

I am satisfied that Mr. Hibberd did not in any such sense prepare for this trial of Annals Popen and Jennifer Popen. He was not afforded a proper opportunity to do so.

Mr. Hibberd's assessment of the brief prepared by Police Constable Wyville in this instance was that it was of average length for a trial in provincial court, but it was shorter than usual for a trial in the County Court of the County of Lambton or in the Supreme Court of Ontario.

Mr. Hibberd testified that he had no connection with the case after February 23, 1976. Someone did represent the Crown Attorney upon the sentencing of Annals Popen on March 29, 1976. Mr. Lang was aware of the sentence imposed and was content therewith. There was no evidence as to the instruction, if any, given by Mr. Lang to the part-time Assistant Crown Attorney who, I assume, did attend. There was no evidence as to the submissions, if any, made by the part-time Assistant Crown Attorney upon sentence.

It is disturbing that a case as serious as this was dealt with by the Office of the Crown Attorney in such a casual manner. Mr. Hibberd acknowledged that cases in the nature of child abuse were serious cases. He said it was "a heinous offence." In retrospect Mr. Hibberd felt that a charge laid under section 40 of the Act should be accorded investigation and preparation on a scale similar to that accorded to cases to be presented in the County Court of the County of Lambton or in the Supreme Court of Ontario. It was clear to me that this case was not so investigated and prepared.

Mr. Lang was aware of the matters required to be proven to support a finding of guilt upon the charge as laid.

That it was not necessary to prove the identity of the person or persons who directly caused the injuries to Kim was a major factor in his consideration and discussions with members of the Sarnia Police Force and the ultimate decision as to the appropriate charge or charges to be laid. But Mr. Lang appeared to give that factor no consideration when he received, considered and discussed Mr. Higgins' letter of February 10, 1976 and eventually instructed Mr. Hibberd, as I presume he did, even though Mr. Hibberd does not recall it. I do not make any finding as to the date or time of that instruction.

Even on Mr. Lang's testimony there is no real indication of the depth of Mr. Lang's instruction to Mr. Hibberd.

There was no mention of any memorandum of law that might be useful to Mr. Hibberd. Having been in the Provincial Court (Criminal Division) of the County of Lambton in October and November, 1975 when the jurisdiction of the judge presiding in that court to hear the case was successfully challenged, Mr. Lang should have known there might have been other intricacies or peculiarities of which Mr. Hibberd should be advised.

There was no testimony that Mr. Lang had informed Mr. Hibberd of a number of matters. These included Mr. Lang's discussions and considerations with members of the Sarnia Police Force before deciding to proceed under section 40 of the Act rather than under the Criminal Code and the basis for the ultimate decision as to the nature of the charge and proceedings.

Another such matter was Mr. Lang's assumption that both the charge under section 40 of the Act and the Society's application were to be heard on the same day and the concerns he would have had and the inquiries he would have made if that were not to occur.

Another was Mr. Lang's belief or expectation as to the nature and extent of the acknowledgment of responsibility for Kim's injuries to be expressed in Court by or on behalf of Annals Popen.

Perhaps because of the short notice he had, whether it was from "4:30 p.m. one day" or 1:00 p.m. on February 23, 1976 is of little consequence, Mr. Hibberd was unable to prepare properly for trial.

He could not recall that he had reviewed section 40 of the Act before the trial.

I do not believe that on February 23, 1976 Mr. Hibberd was aware of the matters required to be proven to support a finding of guilt upon a charge thereunder.

I do not believe he had in any substantial way discussed the matter with Police Constable Wyville. He testified that he had spoken with Police Constable Wyville. That was based on his own testimony that he would not, as a matter of his own invariable practice, withdraw a charge unless he first discussed it with the investigating officer so as to obtain that officer's opinion before deciding upon such a course. He said he would not withdraw a charge if he felt that withdrawal would not achieve justice. If Mr. Hibberd was unaware of the elements of the offence, as I believe he was, essential factors would be missing from any such discussion and decision.

Mr. Hibberd certainly had not been made aware of any suspicions that anyone had as to Jennifer Popen's responsibility for Kim's injuries. Mr. Lang was not aware of it. Mr. Hibberd testified that, had he been aware of the strong suspicion that Jennifer Popen was the one who assaulted Kim, he would not have withdrawn the charge against Jennifer Popen.

He accepted Annals Popen's plea of guilty as being an acknowledgement that Annals Popen had directly injured Kim. He was in error in so doing. The plea was merely an admission that Annals Popen had failed to protect Kim. The remarks by Mr. Higgins following the plea do not enlarge upon that.

Indeed they minimize Annals Popen's responsibility and tend to confuse the issue.

Mr. Hibberd accepted that plea as an effective bar to a finding of guilt against Jennifer Popen. Again he was in error in so doing. Jennifer Popen could have been guilty of the offence of failing to protect Kim notwithstanding Annals Popen's plea.

Mr. Lang's testimony was that charges laid under the Act were, in 1976, tried as summary conviction offences. He said that under section 12(1)(e) of The Crown Attorneys Act, the Crown Attorney was empowered and required to intervene in and to conduct the proceedings in respect of any charge, by whomsoever laid, alleging the commission of any offence against a provincial statute punishable upon summary conviction if, in the opinion of the Crown Attorney, the public interest so required.

Mr. Lang's testimony was that, while he was aware of charges having been laid under section 40 of the Act, he was not aware of any earlier case in which both parents had been charged with the same offence at the same time. He said that in all earlier cases under section 40 of the Act, during his tenure of Office in the County of Lambton from January 31, 1972, his Office had appeared.

That testimony makes it all the more surprising that a case so unusual and serious as was the case against Annals Popen and Jennifer Popen was not more carefully handled by the Office of the Crown Attorney prior to and at trial.

If the Crown Attorney or a member of his staff had appeared upon all charges under section 40 of the Act over the preceding several years, the Crown Attorney and his staff should have been aware that the Act required such charges to be heard by a provincial judge presiding in a provincial court (family division). The case should not have been scheduled for trial in the Provincial Court (Criminal Division) of the County of Lambton. Certainly when Mr. Higgins raised the issue on October 30, 1975 it should have been resolved quickly and the adjournment to November 13, 1975 for resolution of that issue was unnecessary. It would almost seem that no one in

Court on October 30, 1975 had a copy of the Act with him or her. In the alternative, it would seem that Mr. Lang had forgotten or overlooked the specific requirement of the Act, otherwise he would have consented to Mr. Higgins' application to transfer the case to the Court.

On Mr. Hibberd's testimony, Mr. Lang was engaged upon a trial in the Supreme Court of Ontario which had just begun. Thus it would seem that it was not likely that he would have been in a position to appear upon this matter even on February 25, 1976. From the memorandum from his staff seeking advice as to representation on February 23, 1976 and the panic created by the situation, it would seem that at least the clerical portion of the staff in the Crown Attorney's office was not aware of the assignment of the case to Mr. Hibberd and, perhaps until that day, was not aware of the need for representation upon the trial. I gathered that a reminder had come to the Crown Attorney's office from the administrator of the Court.

It would seem that, at least until March, 1976, the Office of the Crown Attorney did not have sufficient barristers on its full-time staff to enable adequate preparation and presentation of serious cases in provincial court. For the most part a Crown Attorney did not appear in the Court unless specifically requested by the Judge presiding therein or unless the Office of the Crown Attorney otherwise became aware of a trial in the Court involving a charge punishable on summary conviction and which, in the opinion of the Crown Attorney, was of such a nature that the public interest so required.

While Mr. Lang testified that his Office had appeared upon all charges under section 40 of the Act since his appointment in 1972, he did not state the basis for that testimony. There was no suggestion that he had made any search of the records of the Court to ascertain what charges under that section had been heard.

The section seems to apply to a broad range of circumstances, from cruelty to failure to protect and thence to failure to support. Thus it would seem that charges thereunder might be laid by a variety of

persons and might result from widely different factual circumstances.

In some extreme cases, as here, a police force may be involved and the charge be laid by a police officer. In such a case it is reasonable to suppose that the police officer or his superiors would advise the Office of the Crown Attorney and request that Office to assume responsibility for the conduct of the proceedings. It is similarly reasonable to suppose that the Crown Attorney would accede to that request.

In other less serious cases, perhaps where a father has deserted his family and refused or neglected to support a child, the mother of the child may lay the charge and it may proceed entirely as a private prosecution. That would be so unless either the mother or the judge presiding in provincial court (family division) advised the Crown Attorney and sought and obtained his agreement to assume responsibility for the conduct of the proceedings or unless the Crown Attorney learned of the charge and determined that it merited his intervention.

There may be instances where an employee of a children's aid society or a similar organization may lay the charge and the staff of that association or organization may conduct the proceedings with reference thereto. The existence of that charge would likely come to the attention of the Crown Attorney only at the instance of the society or others organization or the judge presiding in provincial court (family division). Again the Crown Attorney may learn of it in some other way and determine to intervene.

There was no evidence as to the criteria employed by the Judge presiding in the Court to determine whether or not a matter in the Court would be brought to the attention of the Crown Attorney. Nor was there any evidence as to the stage of the proceedings at which the Judge might decide to request the Crown Attorney to intervene.

There was no evidence as to the criteria employed by Mr. Lang and his staff in determining whether or not his Office should assume the conduct

of any proceedings resulting from a charge laid under section 40 of the Act.

I have no doubt the Crown Attorney would assume responsibility for the conduct of the proceedings in any case of which he became aware and which involved injuries as serious as those suffered by Kim at various times during her lifetime. That would be so regardless of by whom the charge was laid.

I have no doubt the Crown Attorney would assume responsibility for the conduct of the proceedings in any case in which the judge presiding in provincial court (family division), or any police officer or any employee of a children's aid society or similar organization requested him to assume the conduct of the proceedings. That would be so regardless of by whom the charge was laid.

Apart from those two general categories of cases I am uncertain as to the decision that the Crown Attorney might reach in any particular case alleging a breach of section 40 of the Act and of which the Crown Attorney may have become aware.

Continuing to comment upon Mr. Lang's testimony in this area, I note he did not state the number of charges under section 40 of the Act upon which he or his staff had appeared. He did not state how his Office had learned of any such charges. He did not state the general nature of the allegations in those charges.

I recall the evidence of Dr. Singh and employees of the Society that there had been few reported cases of child abuse in Sarnia and the County of Lambton in the years preceding Kim's case. There was no evidence as to how those cases had been treated, whether by charges laid or otherwise, and, if by charge, whether the charge was laid by a police officer and whether, in any event, the proceedings with reference thereto were conducted by the Crown Attorney.

I wonder too if the witnesses testifying to that effect upon the Inquiry were using a limited or restricted definition of child abuse, perhaps limited to cruelty or ill-treatment, rather than the broader

definitions suggested in section 40 of the Act or in the testimony of Dr. Bates and others upon the Inquiry.

While I have expressed criticism of the Office of the Crown Attorney in its handling of the proceedings, I feel that the matters which I have criticized had little, if any, effect upon the development of the ultimate tragedy. They came about largely because of the heavy demands upon Mr. Lang and Mr. Hibberd. The pressures created by the multitude of duties of the office contributed to the failure of Mr. Lang and Mr. Hibberd to give to the case the careful attention it deserved and required.

The failure of the Sarnia Police Force and the Society to advise Mr. Lang of the suspicion held or suggestion made by some employees of the Society and by Dr. Jumean that Jennifer Popen was directly responsible for Kim's injuries deprived Mr. Lang and Mr. Hibberd of information which, I believe, would have affected Mr. Lang's initial decision to withdraw the charge under section 40 of the Act against Jennifer Popen and Mr. Hibberd's ultimate decision to do so when he appeared in Court on February 23, 1976.

From the testimony of both Mr. Lang and Mr. Hibberd, I am satisfied that if either of them had been aware of any such suspicion or suggestion as to Jennifer Popen's involvement, he would not have been prepared to withdraw the charge against her unless and until he was satisfied by full inquiry that the suspicion or suggestion was unfounded.

I am satisfied that neither Mr. Lang nor Mr. Hibberd would have felt that the ends of justice would be served by accepting Annals Popen's plea of guilty and withdrawing the charge against Jennifer Popen if he were aware of that suspicion or suggestion and if, after consideration of all of the information which would be known then to the Sarnia Police Force and the Society upon proper investigation, he were of the opinion that the suspicion or suggestion might have some substance.

Thus I am satisfied that if Mr. Lang had received all of the information known to the Sarnia Police Force, he would not have instructed

Mr. Hibberd to withdraw the charge against Jennifer Popen.

From the testimony upon the Inquiry, I gather that some of the pressure upon the Office of the Crown Attorney was relieved by the appointment of a second full-time Assistant Crown Attorney after Kim's death. It was not suggested that that appointment came about in any way because of Kim's death. It was merely the recognition by the Government of Ontario, as represented by the Attorney General, of the tremendous workload carried by Mr. Lang and Mr. Hibberd and the resulting pressures upon them.

While consideration of some of the events which occurred shortly after Kim's death would not appear to be within the terms of the Ministerial Order appointing me to conduct this Inquiry, I have commented upon them elsewhere in the Report and do so here as well insofar as they tend to indicate the policy and practice of the Office of the Crown Attorney during Kim's lifetime.

Mr. Lang testified that he became aware of Kim's death when that information was given to him by the Sarnia Police Force on Thursday, August 14, 1976. Again Mr. Lang's memory is quite clear. But August 14, 1976 was a Saturday. From later testimony I am satisfied that he was informed on Thursday, August 12, 1976 that Kim had died the previous evening, August 11, 1976.

I am satisfied that Mr. Lang was aware that the dead child, Kim, was the child whose parents had been charged in September, 1975 with the offence against section 40 of the Act. Mr. Lang was told that the Sarnia Police Force had some suspicions as to the circumstances surrounding her death and had begun, but not completed, an investigation with reference thereto.

I am satisfied that Mr. Lang was then aware that Kim's parents had a younger child, now known to be Karie. Mr. Lang testified that he was not aware that that child, Karie, remained in the family home after Kim's death. He did not testify that he had made any inquiry on August 12, 1976 as to the whereabouts of Karie. Other testimony indicates that he did not make such an inquiry. In my view he should

have. Kim's death under circumstances which aroused the suspicions of the Sarnia Police Force and the knowledge Mr. Lang had of her earlier history and injuries and of the charge under section 40 of the Act against her parents should have made Mr. Lang at once aware that Karie might be in need of protection. Mr. Lang should have taken immediate steps to ensure that protection.

Mr. Lang went on to testify that the following day, Friday, which he said was August 15, but was in fact August 13, 1976, Dr. McKinley, an experienced coroner in the County of Lambton, came to him to express great concern as to the care of Karie. Mr. Lang testified that it was only then that he learned that Karie was still in the family home.

Mr. Lang testified that Dr. McKinley said that something had to be done and that Karie had to be removed. He testified that he readily agreed with Dr. McKinley that "the danger was just too great" and that "we couldn't wait to see what was going to happen." I am not sure to whom Mr. Lang referred by his use of the pronoun "we."

Mr. Lang testified that in his opinion that child "was in need of protection right then." By his use of words in the same juxtaposition as they appear in the Act I am sure Mr. Lang was thinking of the child as being a child in need of protection within the meaning of the statute.

Mr. Lang testified that he immediately telephoned the Society. I am satisfied, on Mrs. Harvey's testimony, that he spoke with her. For ease of construction I shall write now as if Mr. Lang testified to that same effect although he did testify that he was not sure of the identity of the person to whom he had spoken.

His testimony was that he insisted that Karie ought to be removed, but that Mrs. Harvey demurred because no charges had been laid and, she said, the Society could do nothing until a charge was laid. He said he told Mrs. Harvey that it might be too late for Karie if no action was taken to protect him before a charge was laid. He said he told Mrs. Harvey that the Sarnia Police Force and he had not completed the investigation and did not know what

might come of it. He said that at the conclusion of that conversation at about 3:30 p.m. he was satisfied that Karie would be removed that day.

In his testimony Mr. Lang did not indicate that he was aware of the provisions of the Act, particularly section 21 of the Act, which would have enabled any police officer as well as any worker in the employ of the Society to remove the child. As I read section 21 of the Act the employees of the Society were no more entitled to remove the child than were members of the Sarnia Police Force. Perhaps in the circumstances, if one can establish grades of entitlement under section 21, a police officer conducting the investigation into Kim's death might have had greater reason to feel that there were reasonable and probable grounds to believe that the child was apparently in need of protection.

There was no evidence to indicate that Mr. Lang had considered and discussed with the Sarnia Police Force the provisions of section 21 of the Act and the possibility of the removal of the child from the family home by the Sarnia Police Force.

Thus in my view Mr. Lang may be criticized for not having considered on August 12, 1976 the safety of that younger child. He was aware of that child's existence. He should have made immediate inquiry of the Sarnia Police Force as to the child's whereabouts and circumstances. I am certain he would have been told at once that the child was still in the family's care and home. He should then have immediately considered whether the child might be in need of protection. On the next day he was quick to "insist" that the Society remove the child. That he was able then to express such insistence leads me to believe that there was no reason why, on August 12 and on August 13, 1976, he could not have advised the Sarnia Police Force of his opinion that there were reasonable and probable grounds to believe that that child was apparently in need of protection and that therefore the child should be taken to a place of safety by the Sarnia Police Force.

My observations in the immediately preceding paragraph must be tempered to the extent that I acknowledge the practical difficulties that

would arise from such advice by a Crown Attorney to a municipal police force.

I doubt that any municipal police force or the Ontario Provincial Police or the Royal Canadian Mounted Police in Ontario has any facility to care for infant children for any prolonged period of time. I understand that whenever a police officer does apprehend a child as being a child apparently in need of protection, the child is placed in the care of the local children's aid society or some similar agency at the earliest opportunity, probably within minutes or a few hours of the time of apprehension regardless of the time of day.

Thus if the local children's aid society had indicated an unwillingness to accept the child, the police force might then be called upon to arrange for the child's care for some lengthy time. Versatile as police officers may be in the performance of their duties, they are not equipped or trained to provide or even to arrange and thus supervise care for infants for any extended period of time.

Mr. Lang's approach wherein he urged the Society to fulfill its mandate was a practical approach, but he took it one day later than he should have.

This had no bearing upon the life and death of Kim. It is perhaps only an indication of the lack of familiarity of the Crown Attorney and his staff with the Act, a lack of familiarity which perhaps contributed to the less than satisfactory conduct of the proceedings in the Court under section 40 of the Act.

Chapter XXIV

The Role of the Provincial Court (Family Division) of the County of Lambton

The Provincial Court (Family Division) of the County of Lambton, hereinafter in this Chapter called the "Court," had a heavy responsibility in two matters affecting Kim's life. The first of those matters was the charge laid against Annals Popen and Jennifer Popen alleging that they had failed to protect Kim in 1975. The second was the application made by the Society for an order declaring Kim to be a child in need of protection and placing her in the care of the Society. Both matters involved The Child Welfare Act.

During Kim's lifetime, His Honour Judge Quincy Lloyd Nighswander was appointed to sit in the Court and in the Provincial Court (Family Division) of the County of Kent. He was the lone provincial judge sitting in the family division of the provincial courts in those counties. He divided his time approximately equally between the two counties. He was extremely busy. The lists of matters for hearing were long.

Mr. Higgins in his testimony upon the Inquiry said:

"Now you must remember that in those days, [February 1976], Judge Nighswander was in Sarnia two days a week and Chatham two days a week. He had to divide himself between two counties and he sat nowhere apparently on Fridays, so the most we had was two days a week and his time was very valuable and we had to pick and choose when there would be a few minutes to deal with a quick matter which is what I thought this would be apparently."

Judge Nighswander while testifying upon the Inquiry, was asked a number of questions with

reference to the Court's case load. Those questions and the responses thereto were as follows:

"Q. I suppose Your Honour, you've had in your court when you were sitting that there was a tremendous case load for Your Honour to deal with all of these matters?

A. Let's say there was a tremendous case load for the court and we ran three months behind frequently. This bothered me as an individual, but I dealt with as much as I could in the day and didn't try to deal with any more. The real disadvantage of that was to the people who had to come to court rather than the judge.

Q. Was there a three month delay, Your Honour, in the court dealing with matters under the Child Welfare Act?

A. If it was going to be an opposed application, it could be, I'm making three months as a general statement, everything wasn't that far behind, but some cases were, in all aspects of the court. Frequently children charged with an offence at the time, wouldn't appear for the first time for two months, there just wasn't time to hear it, there was no time in the docket. Children's aid matters I gave the highest priority, I laid down a priority - children first adults second, so children's aid matters were, because of the need for a quick decision as quickly as possible, I tried to, but even then it wasn't possible."

That testimony by Judge Nighswander was a confirmation of remarks he made during various proceedings in the Court. It and they demonstrated the heavy load the Court and he bore and his interest and concern for those affected by proceedings in the Court, especially the children. It and they also demonstrated the futility of his best efforts.

Elsewhere in the Report, I have reviewed in a general way the manner in which the two matters involving Kim proceeded in the Court. Schedule 2-A

to the Report shows the dates of the various proceedings. In this Chapter I shall confine the review to those areas in which the facilities of the Court affected the conduct of those proceedings.

The first proceeding in the Court was on September 8, 1975, when Mr. Lovatt presented the Society's application for wardship. As might reasonably be expected, both Mr. Lovatt and Mr. Higgins' law clerk, Mr. Ian Harvey, who appeared on that day on behalf of Annals Popen and Jennifer Popen, were not prepared to proceed. Mr. Lovatt advised the Court that the Society would seek an order placing Kim in its care for six months. Mr. Harvey said the the application would be contested.

There then were a series of comments by Judge Nighswander and others which are of importance to this Inquiry. The first such comment was by Judge Nighswander and was:

"Well, if the application is to be opposed, we should set the date now so everybody knows where we are going and don't need a whole lot of adjournments."

That was an indication that Judge Nighswander sought to ensure the selection of a date for hearing without the waste of time of the Court and the parties that would be involved if there were a number of adjournments.

As it developed circumstances thwarted Judge Nighswander.

When Judge Nighswander inquired, he was informed that the Society would require a month for preparation for the hearing which might require two hours in Court.

Thereupon Judge Nighswander said:

"Well, the earliest time would be the 29th of October, and I am going to take time on a Wednesday for it."

The matter was adjourned accordingly. Mr. Harvey inquired about the possibility of Annals Popen

and Jennifer Popen having visits with Kim in the intervening time. Judge Nighswander responded:

"This is something that I would have to leave between the agency and the police. Now, it is not beyond the realm of possibility between now and then that an alternative possibility may develop, or is there --- if something should develop to make this lengthy court hearing unnecessary, please let us know because I am going to reserve all the rest of that day, which means a whole bunch of children are going to wait; but this is a child too. I must say that I regret very much that there is no court time before then, but it's entirely out of my hands."

That was one statement showing Judge Nighswander's concern for the welfare of children affected by proceedings in the Court. It was a further effort by him to ensure that the time available for the sittings of the Court was fully and productively used. It was a statement that matters were waiting to be heard and that, for reasons beyond Judge Nighswander's control, the Court could not provide time for them to be heard.

From time to time during the Inquiry persons skilled and experienced in social work involving child welfare spoke of the need for expeditious handling of cases involving children. They said that would be beneficial to all concerned, particularly the children affected. Parents or guardians of the children and the children's aid society would know their respective positions in relation to the children. If the result was to place a child in the care of a children's aid society, that society could, with knowledge of the terms of the order, properly prepare its plan for the care of the child. Without such knowledge it would be imprudent to prepare any such plan. Any plan for the child's care would be dependent upon the terms of the order ultimately made.

In this instance, by reason of the Court's full schedule, Judge Nighswander was forced to adjourn the matter for over seven weeks, about three

weeks longer than was required by the Society for preparation for the hearing.

The matter next came before the Court on October 29, 1975. At that time Mr. Higgins sought an adjournment because of his commitments in another court and because the charge alleging that Annals Popen and Jennifer Popen had failed to protect Kim had been laid and they were to appear in the Provincial Court (Criminal Division) of the County of Lambton on October 30, 1975. Mrs. Harvey, appearing for the Society, did not oppose the adjournment. Judge Nighswander was prepared to grant it.

In announcing his intention to grant the adjournment, Judge Nighswander said:

"I should mentioned one thing to you, Mr. Higgins. It will be certainly in December or early January before we can proceed.

Now, I can...I am going to grant the adjournment for two reasons. One, that the children themselves (sic) will remain in the care of the Children's Aid until the matter is completed. Secondly, I consider a wardship matter one of the most serious matters that comes before the Court, and it's important that both sides have every opportunity of adequate preparation and ability to present their side of the matter, so that I am going to grant the adjournment. It's a question now of picking a date."

That was another statement of concern by Judge Nighswander for the persons appearing in the Court or affected by the proceedings in the Court. He showed that he believed that matters involving the wardship of children were among the most serious matters to come before the Court. The wisdom of that belief is self-evident.

That statement, coupled with the proceedings in the Court on September 8, 1975, provides some assistance to measure the pressure upon the Court's time. On September 8, 1975 one of the most serious matters to be dealt with by the Court could not be

scheduled for hearing earlier than October 29, 1975, about seven weeks in the future.

During discussion as to the length of the adjournment to be granted, Mr. Higgins sought to ensure that the adjournment would be such as to ensure that the hearing could begin early enough in the day to enable its completion on that same day.

Mr. Higgins said:

"I have seen several cases recently, you know of them, that we started in the afternoon and didn't finish. I find that most unpleasant, to have to go back two months later and have to remember what happened. It must be extremely difficult..."

Judge Nighswander responded as follows:

"I have a full day on Monday on the 19th of January. It's a terribly long time."

and, after a comment by Mr. Higgins, Judge Nighswander continued to say:

"Yes, certainly the Court is interested in it being speeded up, so I will adjourn this to the 19th of January, 10:00 a.m. and I will set the whole day for it."

The matter was then adjourned to January 19, 1976, a date almost twelve weeks in the future.

I infer from Mr. Higgins' comment that adjournments of up to two months even after trials or hearings had begun were not uncommon. In this instance the Court was unable to assure the availability of sufficient time earlier than twelve weeks in the future.

Again one of the most serious matters within the Court's jurisdiction had to be adjourned for "a terribly long time" to use Judge Nighswander's words.

Each adjournment of the hearing resulted in an equivalent delay in the management of Kim's case by the Society. Mr. Carter was not doing the normal

case work. Each adjournment had an effect upon Kim's life.

By November 17, 1975, the charge against Annals Popen and Jennifer Popen under section 40 of The Child Welfare Act alleging their failure to protect Kim had been transferred from the Provincial Court (Criminal Division) of the County of Lambton to the Court. On November 19, 1975 the trial of that charge was adjourned to January 19, 1976.

Thus both matters in the Court affecting Kim were scheduled to be heard on the same day.

On January 19, 1976, both matters were adjourned because of the absence of Dr. Singh, an essential witness in each matter, on behalf of the Crown in connection with the charge against Annals Popen and Jennifer Popen and on behalf of the Society in connection with its application.

Mrs. Harvey, appearing for the Society, apparently wished to present the application and the evidence save and except Dr. Singh's testimony. Mr. Higgins opposed that suggestion. In stating his position he said, in part, that an adjournment "means we would be back here six, eight, ten weeks from today," and then:

"We have had experience here before of having cases split before for six to eight weeks, and it's very difficult for counsel."

Those were statements similar in effect to what was said on earlier occasions. Even an interruption of a trial would entail a lengthy adjournment. Neither Judge Nighswander nor Mrs. Harvey disputed either statement.

In the same discussion when Judge Nighswander suggested that a whole day should be reserved, Mr. Higgins said that two days might be required. He said that if the hearing were to begin, but not completed that day, January 19, 1976, he wanted to be able to continue on the next day.

Judge Nighswander's response to that was:

"Well, I can assure you we would not be in a position to continue tomorrow, because the Court is all tied up tomorrow in another place."

Later in the discussion Judge Nighswander again showed his recognition of the importance of the proceedings. He said:

"Now, we are dealing here with a matter which in my point of view is the most serious kind of matter that ever comes before this Court, and that is to determine whether or not a child is in need of protection. This is a serious matter for a child and a serious matter for the child's welfare."

That adjournment from January 19, 1976 came about through no fault of the Court. Indeed the Court was a victim. The Court's entire facilities were available for the hearing of the Society's application and the trial of Annals Popen and Jennifer Popen upon the charge under section 40 of The Child Welfare Act. Mr. Higgins learned of Dr. Singh's absence only minutes before the Court opened that morning. The Court learned of it only when the matters were called in Court.

It is not specifically stated in the transcripts of that day's proceedings in the Court, but it seems to be implicit in some of the remarks that, as a result of the adjournment, the Court's facilities could not be fully utilized that day. Counsel, parties and witnesses involved in other matters not scheduled for trial or hearing that day could not be expected to be available on such short notice.

The Society and the Office of the Crown Attorney did a disservice to the Court, to other persons involved in other matters before the Court and, most importantly for my present purposes, to Kim.

In discussion as to when the matters might be heard, Mrs. Harvey said that Dr. Singh would be available early in February. Thereupon Judge Nighswander said:

"Well, early in February is not possible since there is no court time available early in February. Now, first we will pick the earliest date that we have a whole day available. Now, the earliest Monday is the 29th of March. Now the earliest...now there's two...there are two cases set for the afternoon for first hearing, and I can arrange to have them cancelled on the 25th of February. We have a full Wednesday on the 25th of February, or the 10th of March. Now, are both those dates...and I will certainly recess to give both parties time to make phone calls if they need to."

That again illustrates the heavy load borne by the Court and Judge Nighswander.

After January 19, 1976 the first Monday for which the Court was not committed was March 29, 1976, about ten weeks away. Judge Nighswander could make Wednesday, February 25, 1976, about five weeks away, available, but that would involve "cancelling" two other matters which had been scheduled for "first hearing." The next available Wednesday was on March 10, 1976, about seven weeks away.

In the end result, both matters were adjourned until February 25, 1976.

As a result of discussions and correspondence, particularly between Mr. Higgins and Mr. Lang, Crown Attorney for the County of Lambton, the date for the trial of Annals Popen and Jennifer Popen upon the charge under section 40 of The Child Welfare Act was advanced from February 25, 1976 to February 23, 1976. I have dealt with that series of events in quite some detail elsewhere in the Report, particularly in Chapter VIII, a review of events in Kim's life from September 5, 1975 to February 25, 1976, and in Chapter XXIII, a review of the role of the Office of the Crown Attorney in Kim's life.

I infer that the change in the date for that trial was made with the concurrence of the administrative staff of the Court. There was no direct evidence to that effect.

The transcripts of portions of the proceedings in the Court on February 23, 1976 which were available to the Inquiry do not indicate that Judge Nighswander was in anyway surprised to find the trial of Annals Popen and Jennifer Popen on his list of cases or matters for that day and at that particular time of day, 1:30 in the afternoon.

That the Court, on very short notice, probably less than one week, was able to accommodate Mr. Higgins and the Crown Attorney demonstrates the desire of the Court to deal as expeditiously as possible with serious matters. Admittedly, by this time counsel were in a position to have indicated that, subject only to Judge Nighswander's view of the appropriateness of the submissions to be made, the trial, apart from the imposition of sentence, would require perhaps as little as ten minutes.

In other areas of the Report, particularly where I discuss the roles of Mr. Higgins, the Sarnia Police Force and the Office of the Crown Attorney, respectively, and in Chapter VIII where I review events in Kim's life about that time, I have noted that only a relatively small part of the evidence available was presented upon the trial. The material read into the Record of the trial by Mr. Hibberd, the Assistant Crown Attorney, was sufficient to satisfy Judge Nighswander.

On his plea of guilty, Annals Popen was found guilty of the charge. On her plea of not guilty and in the absence of evidence against her, Jennifer Popen was found not guilty. A pre-sentence report was ordered and Annals Popen was remanded out of custody to March 29, 1976 for sentence.

The application of the Society for an order in respect of Kim came on for hearing as scheduled on February 25, 1976.

In other portions of the Report, particularly Chapter VIII, mentioned in the preceding paragraph, and Chapter XIV, in which I review Mrs. Harvey's role in Kim's life, I have set forth comments upon the proceedings on that day.

The evidence presented upon that application enlarged somewhat upon and included the summary

read by the Assistant Crown Attorney which had constituted the evidence against Annals Popen on his trial two days earlier. The entire evidence presented in Court on behalf of the Society was virtually the minimum required to enable Judge Nighswander to find that Kim was a child in need of protection. It was not all of the evidence available to the Society at that time.

Notwithstanding any shortcomings in the presentation of the application, Judge Nighswander was able to decide that Kim was a child in need of protection. Notwithstanding the absence of submissions following the presentation of evidence and notwithstanding Mrs. Harvey's statement that the Society sought an order placing Kim in its care for only two months, Judge Nighswander was able to discern that two months was not a sufficient period of time; so he placed Kim in the care of the Society for a period of six months. That was in accordance with the statements made on behalf of the Society on earlier appearances in the Court.

It was probably more in accordance with Mrs. Saul's preliminary assessment in June, 1975 with which Mrs. Harvey had agreed. Despite a very short encounter with the Popen family, Mrs. Saul reported orally to Mrs. Harvey, in part, as follows:

"A. Yes, and with Mrs. Harvey I went into the situation in much more detail, because I felt that this situation should be transferred on immediately rather than sit or stay with me as the investigating worker. This transfer on immediately was sometimes done within the agency because my role in the agency was that of a short term worker and I did initial investigations and what we call short term counselling, that hopefully I wouldn't become involved in a situation very long, but when you have a situation where it was very obvious that involvement with the agency and this particular family would be a long term, very often or sometimes a case will be transferred on at that point.

Q. Right immediately?

A. Yes. And so I recommended that the case be transferred on immediately, and why, and Mrs. Harvey agreed with me that this case definitely needed to be transferred to a long term worker and she mentioned that the case would be transferred to Mr. Carter and that's where I left the situation."

In that absence of submissions Judge Nighswander was called upon to deliver judgement in a sort of vacuum. The oral judgement which he immediately delivered was variously described by witnesses upon the Inquiry. Those were persons who, in my opinion, by reason of their own training and skills and experience were qualified to compare the force or strength of that judgement with that of other judgements upon applications similar in nature to that of the Society. In brief they regarded it as being a strong judgement.

In my opinion it was a strong and forceful statement of Judge Nighswander's concerns for Kim's safety and for improvement of conditions in her home before she was again entrusted to the care of her parents.

A copy of Judge Nighswander's reasons for judgement are reproduced as Schedule 2-H to the Report. While it is the strong and forceful statement I have described, when it is read in the light of the evidence upon the Inquiry, it discloses how, by reason of the shortcoming of the presentation of the application and the evidence in support thereof, he was misled. His attention was diverted from Jennifer Popen and was directed towards Annals Popen.

As Judge Nighswander testified upon the Inquiry, the basic issue upon the hearing was the determination of Kim's need for protection. It was not necessary to determine the identity of whoever caused her injuries.

I infer that, because his attention was directed towards Annals Popen as the abusing parent, his remarks as to the nature of improvement to be required in the Popen home related primarily to Annals Popen and his alleged problem with alcohol.

I infer that because his attention was diverted from Jennifer Popen he expressed no comment as to any improvement in or treatment of her.

I infer that had Judge Nighswander heard the testimony which was presented upon the Inquiry and which related to events on and before August 31, 1975 and which therefore was available to be presented in the Court on February 25, 1976, his judgement would have been enlarged to express comment or impose terms requiring assurances that Jennifer Popen would receive treatment to ensure that she did not again injure Kim.

After judgement was delivered on February 25, 1975, the only proceeding in the Court was on March 29, 1976 when Judge Nighswander imposed sentence on Annals Popen upon the charge under section 40 of The Child Welfare Act. Sentence was suspended and he was placed on probation for one year on the special terms that he

"totally abstain from drinking alcoholic beverages and take treatment for his alcoholism."

It is a credit to the Court and to Judge Nighswander as an individual that, on his own initiative pursuant to the specific provision of section 25(2) of The Child Welfare Act, he required Jennifer Popen to testify. It was while she testified that the explanations for Kim's various injuries were shown to be unworthy of belief.

Nonetheless, a disservice was done to the Court and Judge Nighswander. Judge Nighswander was led to believe that Annals Popen had caused some of Kim's injuries. The learned judge was led to believe that Jennifer Popen was the innocent spouse of a man who, perhaps as a result of consumption of alcohol, injured their child. Apart from whatever might have been inherent in her plea of guilty upon her trial for manslaughter in December, 1977, it was not until she testified upon this Inquiry and upon the new trial of Annals Popen for manslaughter in December 1981, that Jennifer Popen acknowledged her responsibility for some of the injuries to Kim, including those which Judge Nighswander had been led to believe had been caused by Annals Popen.

Judge Nighswander, before his appointment as a provincial judge in 1968, had had considerable training and experience in social work, including work in children's aid from 1948. For three and one half years he was the Local Director of the Children's Aid Society of the County of Kent. He was a knowledgeable and experienced provincial judge.

By reason of the small amount of evidence tendered and the absence of submissions by Mrs. Harvey and Mr. Harvey upon the Society's application, he was required to draw upon his own resources of knowledge and experience. In his testimony upon the Inquiry, Judge Nighswander said that in any proceeding such as the Society's application in respect of Kim, the first issue to be resolved is whether or not the child named in the proceeding is a child in need of protection within the provision of The Child Welfare Act. If that is resolved in the affirmative, three ultimate dispositions of the matter are available to the Court.

He testified that the identity of the person or persons who caused injury to the child is not an element in the determination of the issue as to the child's need of protection.

The three dispositions which might be made when a child has been found to be a child in need of protection are an order making the child a ward of the Crown, an order making the child a ward of a children's aid society for a stated period of time and an order empowering a children's aid society for a stated period of time to supervise the child while the child remains in the care of his or her parents or guardians.

Judge Nighswander testified that normally, as in Kim's case, when a child is removed from the family by a children's aid society the initial application by the children's aid society is for an order making the child a ward of the children's aid society for a stated time. That is intended to enable the children's aid society to have time to consider whether or not there is improvement in the family circumstances or some indication that such improvement might come about.

Judge Nighswander testified that he had informed the Society that if an appropriate application was not made to the Court to extend the period of wardship or to replace it with an order for supervision by the Society, any order making a child a ward of the Society would, by effluxion of time, expire at the end of the period stated in the order.

In his testimony upon the Inquiry, as he had done upon the hearing of the Society's application on February 25, 1976, he emphasized that, notwithstanding any submission by or on behalf of the children's aid society or the parents of the child, and notwithstanding any consent of those parents to any submission, the selection of the appropriate disposition rests only with the provincial judge sitting in provincial court (family division).

In his testimony, Judge Nighswander said that upon applications, such as that presented by the Society in respect of Kim on February 25, 1976, a mere summary, such as would support a finding of guilt upon a plea of guilty in criminal proceedings, would not be sufficient to ensure the success of the application even if it were not opposed, as by the parents of the child. It was for that reason that he wanted Jennifer Popen to testify, but he could not remember any specific concern he had had.

That testimony by Judge Nighswander supports my view as to the nature and weight of the evidence presented by the Society. It was minimal. It was no more than a "summary" if I may use Judge Nighswander's word.

From Judge Nighswander's testimony and from the fact that he required Jennifer Popen to testify, I infer that the evidence presented by the Society might not have been sufficient to persuade him to grant the application by the Society or, if it were so sufficient, to enable him to determine the appropriate disposition upon granting the application to declare Kim to be a child in need of protection.

Judge Nighswander did testify that the statement of counsel on behalf of Annals Popen and Jennifer Popen, which Judge Nighswander interpreted to be a statement that they did not oppose the application, might be taken as tantamount to an admission

that Kim was a child in need of protection and should be in the care of the Society. He said that might have influenced Mrs. Harvey's presentation of the application and thus led to her presenting less evidence or in lesser detail and less forcefully than if the application had been opposed.

As is apparent from his reasons for judgement, Judge Nighswander believed, and he so testified upon the Inquiry, there was reason to think that whatever problems had existed in the Popen household might be corrected, but two months was not a sufficient time to enable such correction.

Judge Nighswander was questioned as to the care of a child subsequent to an order declaring the child to be in need of protection and placing the child in the care of a children's aid society for a specific period of time. The question was particularly directed to the matter of the return of the child into the family home. His response was that the children's aid society is then fully responsible for the care of the child and the provincial court (family division), having made the order, has no jurisdiction to direct the children's aid society in any detail of that care. He said there was no requirement that the children's aid society return to the provincial court (family division) before returning the child even prior to expiration of the period of time set forth in the order. He did not regard an appearance in provincial court (family division) prior to the child's return as being general or usual practice.

A portion of Judge Nighswander's response to that area of questioning was transcribed as follows:

"They [the children's aid society] are the child's parents during that time and they have the same authority as ordinary parents do and they can place it with Aunt Mildred or whatever, their own child. Similarly the children's aid, so that they would not have occasion to consult the court if they had the full, unless they wanted to change the disposition."

While one or more words seem to be missing after the word "full" the meaning of the response is clear.

He expanded that response to say that, in his view, the Society in theory could have returned Kim to her parents immediately after he made the order on February 22, 1976. In his view the Society was entitled by law to do that. The example he gave in that enlargement was of a child in need of protection because of the serious illness of a parent who was returned to the family home when the parent's recovery was accomplished much more quickly than had been expected when the order was made.

In that area of his testimony, Judge Nighswander spoke of "a dramatic change in circumstances," presumably in the family's home. The example he had given would meet that criterion. Kim's case could not meet it.

Judge Nighswander was questioned about the application presented to the Court on August 4, 1976. It was an application for an order enabling the Society to supervise Kim's care.

Judge Nighswander distinguished that application from the one presented on February 25, 1976. At that time the Society sought to have Kim placed in its care and were successful. However, upon that application the Court might have left Kim in the care of her parents subject to supervision by the Society.

By its application presented on August 4, 1976, the Society merely sought the right to supervise Kim's care in her family's home.

Judge Nighswander testified that the results flowing from a supervision order were different from those flowing from an order placing a child in the care of a children's aid society. In the event of the latter type of order, the child is a ward of the children's aid society and, even if the children's aid society returns the child to the parents during the period of wardship stated in the order, the children's aid society has authority over the child while the order remains in effect.

He said a supervision order is sought if the children's aid society wishes legal authority to

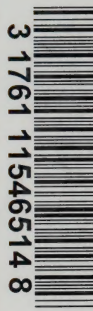
enter the child's home at its sole discretion. He suggested that an example of such a situation would be that conditions in the home have improved, but not sufficiently to satisfy the children's aid society as to the child's safety.

He said that normally an application for a supervision order, assuming it were to supercede or replace an order of wardship, is made prior to the expiration of the wardship order by effluxion of time.



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